

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS**
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

JEFFREY B. AND SHEILA D. WALCOFF

Petitioners

Jeffrey Walcoff

Kevin Miller

Gerald Lee Miller

Stephen Peterson

Alan Clapp

William Landfair

For the Petition

Jody Kline, Esquire

Attorney for the Petitioners

Jack Chomko, Karen Smith, Nancy Hammer
and Eric Myers

Community Participants in Support

Clarksburg Town Center Advisory Committee
By Kim Shiley and Lynn Fantle

James Gregg

Community Participants in Opposition

Before: Martin L. Grossman, Hearing Examiner

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Board of Appeals Case No. S-2659
(OZAH Case No. 06-14)
Board of Appeals Case No. S-2660
(OZAH Case No. 06-15)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petitioners Jeffrey B. Walcoff and Sheila Dearybury Walcoff, filed applications on September 12, 2005,¹ seeking two Special Exceptions at the same location. BOA # S-2659 seeks to establish a Veterinary Hospital pursuant to Section 59-G-2.32 of the Zoning Ordinance, and S-2660 seeks to establish an Animal Boarding Place pursuant to Section 59-G-2.02 of the Zoning Ordinance. The subject property is located at 22414 and 22416 Frederick Road (Maryland Route 355), Clarksburg, Maryland, in the R-200 Zone. The Tax Account Numbers are 02-00025591 and 02-00018937.

This combined case was originally noticed for a public hearing on February 6, 2006, but the hearing was postponed a number of times at the request of Petitioners. In the meantime, a number of letters were received from the community, both for and against the project, including a petition signed by 13 individuals in support of the application (Exhibit 33). In fact, supporting letters far outnumbered opposition letters, and some of the opposition (for example, that of the Clarksburg Civic Association) objected only to the boarding facility, and not to the veterinary hospital. *See* Exhibit 25.

A report issued by Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), dated February 22, 2006 (Exhibit 40), recommended approval of the petitions, with conditions.² Although Petitioners had amended their original petitions to address concerns raised by Technical Staff, the Montgomery County Planning Board voted, on March 9, 2006, to reject the subject petitions (*See* Exhibit 42). This resulted in further postponements of the public hearing to give Petitioners an opportunity to further amend their plans.

On May 5, 2006, a notice of a public hearing before the Hearing Examiner on the subject petitions was issued, scheduling the new hearing date for September 25, 2006. Further amendments to

¹ This is the filing date indicated on the petitions. This date, "9-12-05," is also entered on the front of the file folders, but then crossed out, with a substitution of the date "10/27/05." While the latter may be the date that all required documents were filed to complete the application, the Hearing Examiner saw nothing in the formal record to so indicate, and therefore the earlier date of September 12, 2005 is used as the filing date in this report.

² The Technical Staff Report (Exhibit 40), and its follow-up report of August 31, 2006 (Exhibit 57) are frequently quoted and paraphrased herein.

the petition were filed and duly noticed, as evidenced in Exhibits 51, 53 and 55. On August 31, 2006, Technical Staff filed a supplemental report (Exhibit 57) recommending approval, with conditions, and on September 14, 2006, the Planning Board voted unanimously to approve the project, with conditions. *See* Planning Board letter of September 15, 2006 (Exhibit 58).

The hearing went forward as scheduled on September 25, 2006. In addition to Petitioners' witnesses, seven community witnesses testified (four in support and three in opposition), and the record was held open until October 10, 2006, to allow Petitioners time to further discuss the case with their immediate neighbors. On October 9, 2006, a member of the John Wesley United Methodist Church, which is located adjacent to the subject site, wrote to express her personal opposition to the proposed boarding facility (Exhibit 89). When it proved impossible for Petitioners to complete negotiations with their neighbors within the scheduled timeframe, the Hearing Examiner issued an order on October 17, 2006 (Exhibit 90), reopening the record to allow input from the adjacent church and those living nearby on Running Brook Drive regarding the advisability of a fence on the property line.

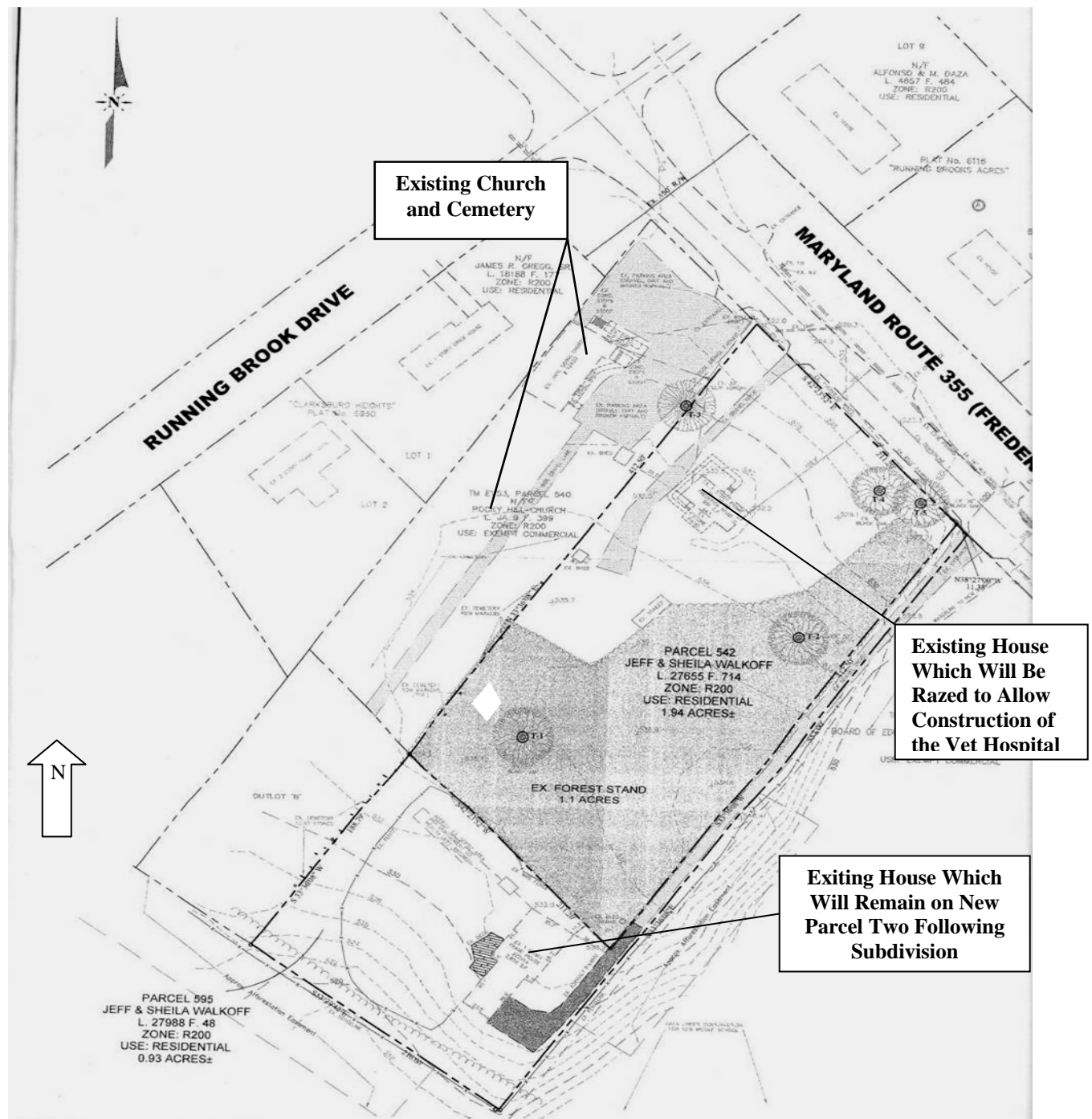
On December 11, 2006, Petitioners advised the Hearing Examiner (Exhibit 92) that a meeting had been held at the John Wesley United Methodist Church, and the Church had decided that it did not want a fence on the property line, but it did want certain protections for the gravestones located there. Technical Staff, who attended the meeting, confirmed Petitioners description of the meeting and approved conditions to protect the gravestones (Exhibit 93). On December 14, 2006, the Hearing Examiner issued an order closing the record effective December 26, 2006 (Exhibit 94).

As will appear more fully below, the opposition in this case has raised some legitimate concerns, but based on the entire record, the Hearing Examiner is convinced that the special exceptions should be granted and that the neighbors' concerns can be sufficiently addressed in conditions imposed on the special exceptions.

II. FACTUAL BACKGROUND

A. The Subject Property

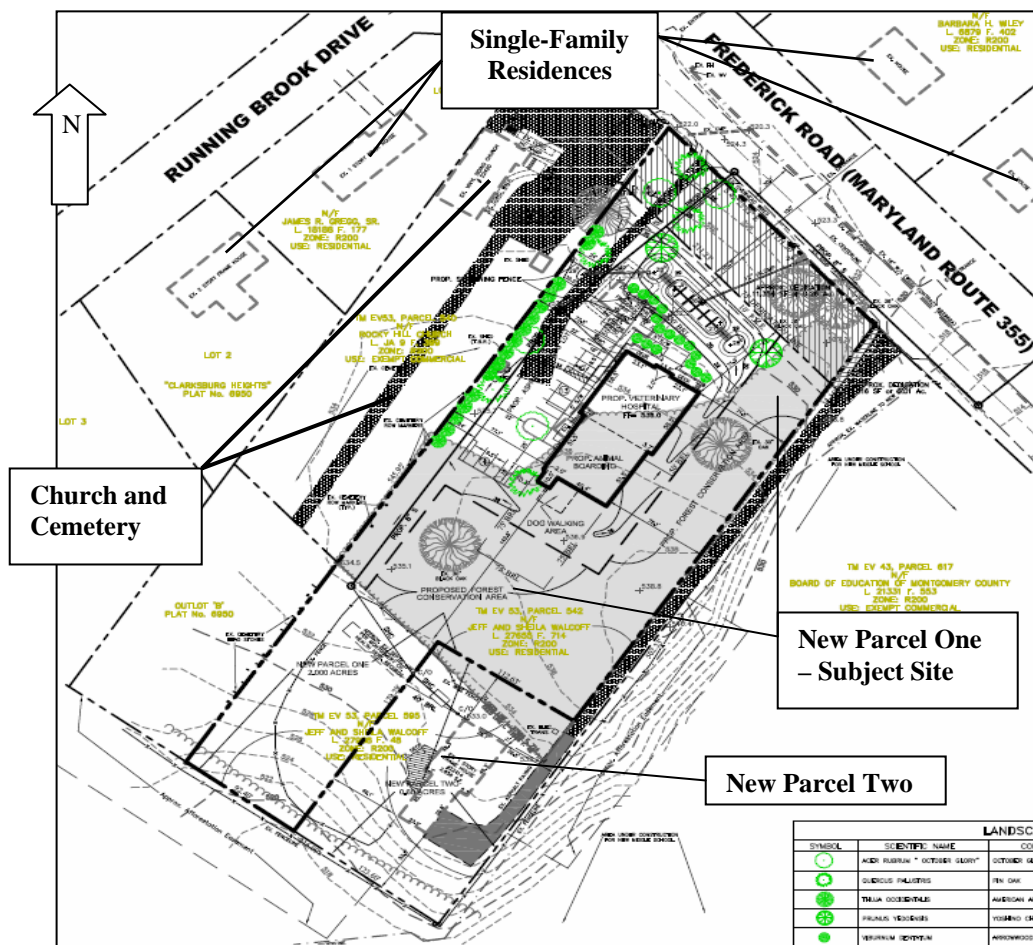
The subject site will consist of two properties, which according to Technical Staff, will be re-subdivided to adjust lot lines and dedicate right-of-way. The properties are adjacent to Frederick Road (Maryland Route 355), and are known as Parcel 542 and part of Parcel 595 on Tax Map EV 53. The present site conditions are shown on an "Existing Conditions Plan," Exhibit 63:



The existing one-story frame house (which will be razed) and its gravel access driveway currently on the site are shown below in a photo from Exhibit 40:



The proposed special exception site, after subdivision, will include all of Parcel 542 and the northwest portion of Parcel 595, all of which is labeled “New Parcel One” on the Site and Landscape Plan (Ex. 52(a)). The remaining portion (labeled “New Parcel Two”) will be off site, as shown below:



SPECIAL EXCEPTION NOTES

- 1) Properties are currently owned by Jeff and Sheila Walcott and are designated on Tax Map EV 53 as Parcels 542 and 595. Parcel 542 is recorded in Liber 27655 at Folio 714 and Parcel 595 is recorded in Liber 27988 at Folio 48. Property address is No. 22416 Frederick Road.
- 2) Topography is based on field-run topo performed by Christina Land Surveys, LLC in January, 2004. The contour interval is 2'.
- 3) Horizontal datum is NAD 83/91 (MSP) and was derived by GPS observation performed by Powell & Associates, Inc. Vertical datum is NAVD88.
- 4) Soils information taken from Montgomery County Soils Survey, Map 7 of 28
Soil Types include:
4C (Eliak Silt Loam-8%-15% slopes), HSG-'C', K Value: 0.32.
16B (Brinklow-Blocktown channery silt loam-3%-8% slopes), HSG-'C', K Value: 0.24.
17B (Occoquan Loam-3%-8% slopes), HSG-'B', K Value: 0.37.
- 5) There are no steep slopes on this site.
- 6) There are no flood plains, wetlands, or critical habitats on this site.
- 7) There are no specimen or champion trees on this site.
- 8) Site area of new Parcel One is 98,492 S.F. or 2.26 Ac. Approximately 11,354 S.F.± shall be dedicated to the public right-of-way for MD Route 355 leaving a total of 87,138 S.F. or 2.000 Ac.±.
- 9) Site is currently zoned R-200 and lies within the Clarksburg Planning Area (PA-13). Site also lies within the "Clarksburg Special Protection Area".
- 10) R-200 Zoning Requirements:
Min. Lot Area: 20,000 Square Feet
Min. Lot Width (for one-family detached dwelling): 100'
Min. Setbacks:
Front: 40'
Side: 12'; (sum of both sides = 25'); 16' Min. Parking Setback
Rear: 30'
Max. Bldg. Height: 50'
Special Exception Zoning Requirements:
Min. Setback for Veterinary Hospital: 50'
Min. Setback for Animal Boarding: 75'
- 11) Existing Conditions:
Total Existing Lot Area (L. 18118 F. 005) - 2 Ac. or 100%
Ex. House & Shed Footprint Areas: 1,032 S.F.
Ex. Gravel Area: 1,560 S.F.
Total Ex. Impervious Area: 2,592 S.F.
Total Remaining Green Space: (87,120 - 2,502) = 84,618 S.F. or 97.1%
- 12) Proposed Conditions:
Anticipated Parcel One: 98,492 S.F.
Anticipated Public Dedication: 11,354 S.F.
Working Site Area: 87,138 S.F. (100%)
Prop. Veterinary Hospital w/ Boarding & Dog Walking Area: 6,610 S.F.
Prop. Asphalt Parking: 9,240 S.F.
Prop. Conc. Sidewalks + Misc.: 1,750 S.F.
Total Impervious Area: 17,600 S.F. or 20.2%
Remaining Green Space: (87,138 - 17,600) = 69,538 S.F. or 79.8%
- 13) Parking Requirements:
Required Parking per Zoning Section 59-G-2.02 (Animal Boarding Place): The board must specify a minimum number of off-street parking spaces equal at least to the number of employees on the maximum shift plus three. The required number of parking spaces must in no case be less than 3.
Proposed Parking: The proposed maximum shift shall consist of ten (10) employees; therefore, 10 parking spaces plus 3 for a total of 13 are required. Seventeen (17) spaces have been provided, including one handicapped (H.C.) space. Please note that the parking requirements for Zoning Section 59-G2.32 (Hospital, Veterinary) have also been met.

SPECIAL EXCEPTION LAND AREA TABLE

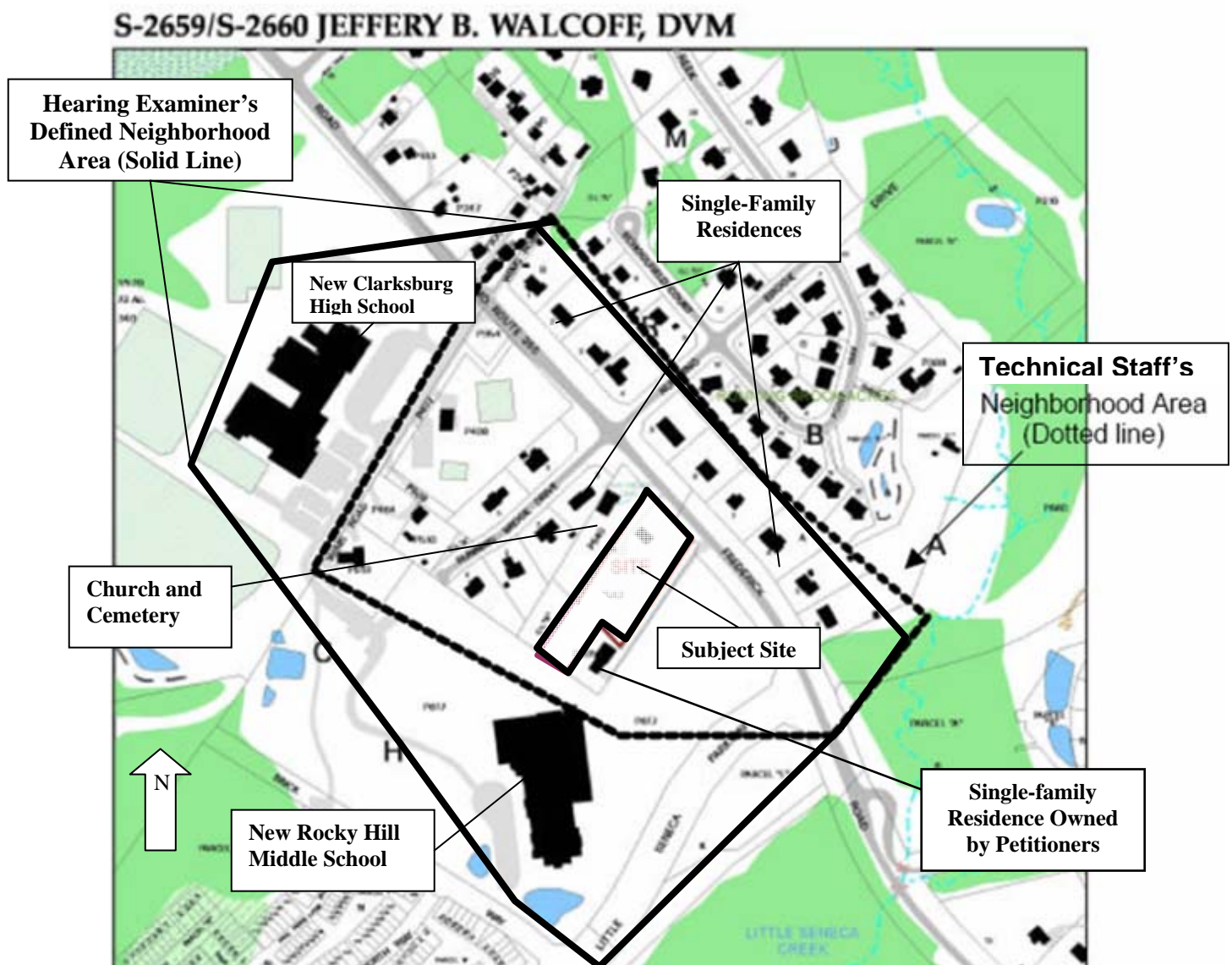
Parcel/Property	EXISTING Owner/Deed	Area
542	Walcott/L. 27655 F. 714	* 2 Ac.
595	Walcott/L. 27988 F. 48	0.94 Ac.
Total of 2 Parcels * (Deed Area Only)		* 2.94 Ac.
PROPOSED		
Total Tract Area (per boundary survey):		2.87 Ac.
New Parcel One		2.26 Ac.
Parcel One Dedication		0.26 Ac.
Remaining Area		2.00 Ac.
New Parcel Two	EXHIBIT NO. <u>52(a)</u>	0.61 Ac.
Parcel Two Dedication	REFERRAL NO. <u>S-2659</u>	0.01 Ac.
Remaining Area		0.60 Ac.

The subject site has no steep slopes, flood plains, wetlands, critical habitats or champion trees, but it is located within the Clarksburg Special Protection Area. The site (*i.e.*, New Parcel One) will be 2

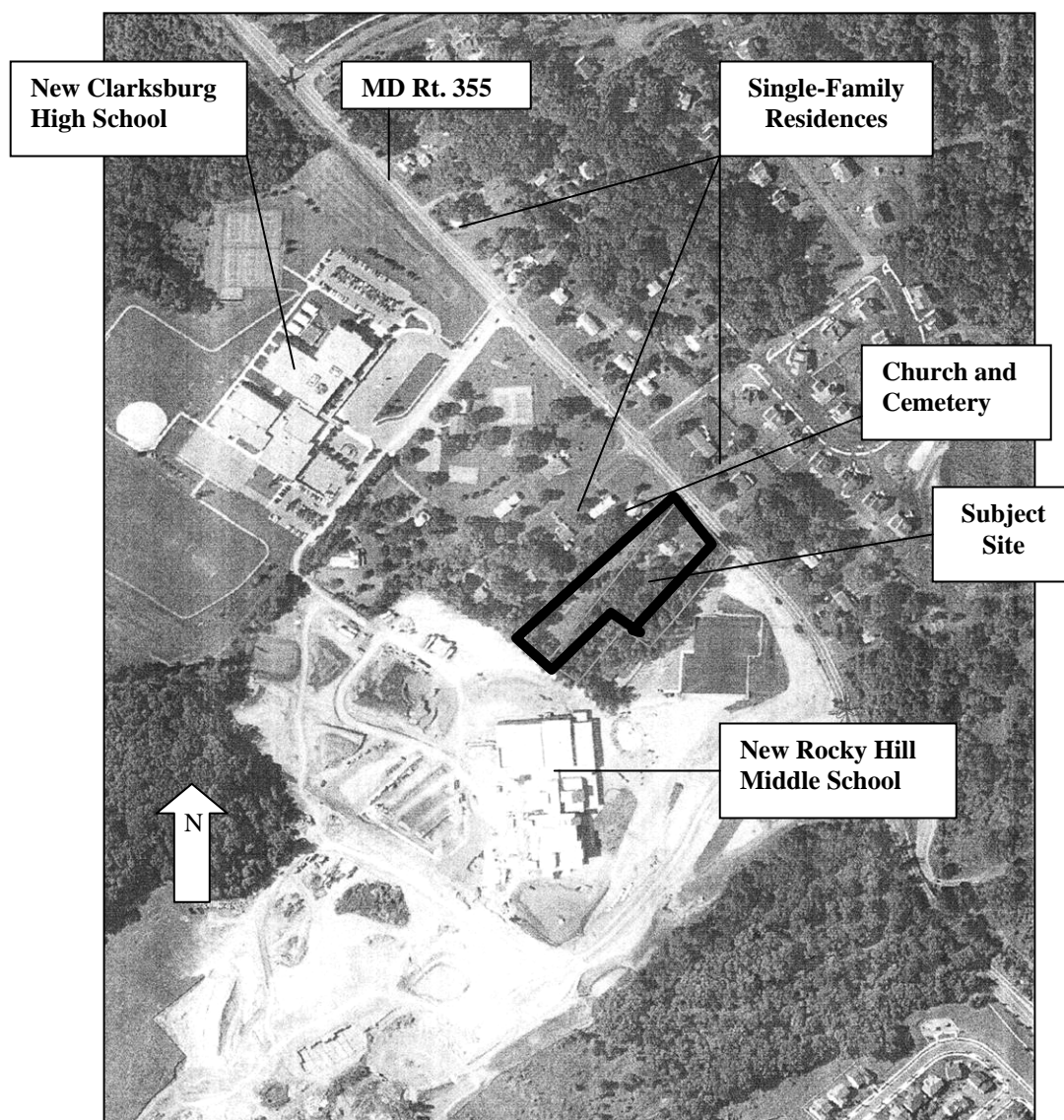
acres (87,138 sq. ft.) in area after dedication of approximately 11,354 square feet for public right-of-way. The rear lot (*i.e.*, New Parcel Two) will have a pipe-stem shape to give it access to Frederick Road. It will have an area of approximately 0.61 acres, and the existing house on New Parcel Two, which is owned by the Petitioners and rented to a family, will remain and continue as a residential use. No special exception is proposed for New Parcel Two.

B. The Surrounding Neighborhood

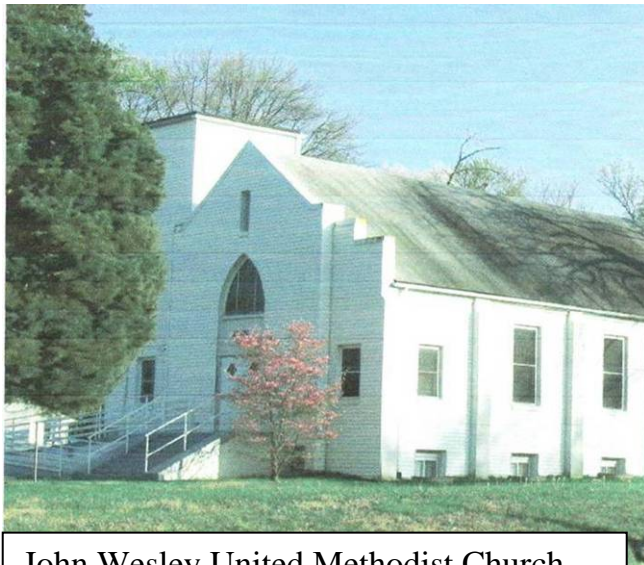
The subject site and the general neighborhood can be seen below on the vicinity map attached to the February 22, 2006 Technical Staff report (Exhibit 40), and modified by the Hearing Examiner to show a revised general neighborhood definition and updated labels:



As can be seen in the above map, Technical Staff defined the neighborhood as including all of the non-school, single-family residential properties along MD 355 (Frederick Road) and the single-family residential properties along Running Brook Drive. This area is primarily residential in nature, but the site is located between two nearby large schools, Clarksburg High School and Rocky Hill Middle School, which dominate the area. The Hearing Examiner agrees with Petitioners' land use expert, Bill Landfair, who testified that the general neighborhood should therefore include the two schools. Tr. 210. Adjacent to the subject site, on the north, is the John Wesley United Methodist Church and cemetery. Further north are single-family residences and the Clarksburg High School. Across Maryland Route 355, to the east, are single family residences. On the adjacent property, south of the subject site, is the new Rocky Hill Middle School campus, shown under construction in the following aerial photo, Exhibit 65:



The surrounding zoning is R-200 to the north, east and west, and R-200/TDR to the south (Exhibit 12). According to Technical Staff, there are no other special exceptions in the defined neighborhood. The following pictures show features of the neighborhood:



John Wesley United Methodist Church

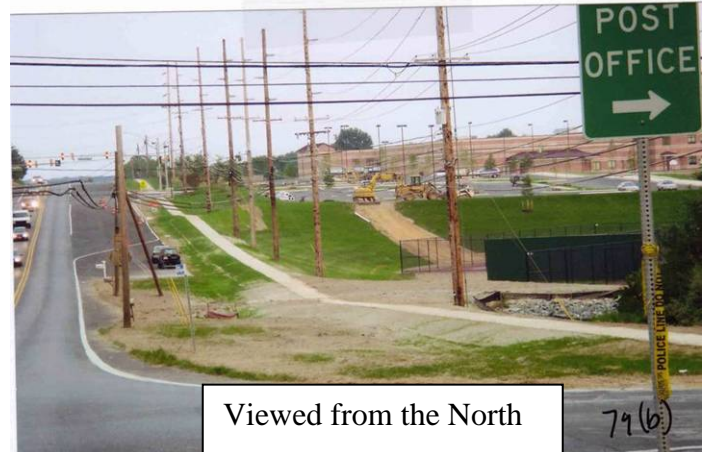


Viewed from the South

Clarksburg High School



Rocky Hill Middle School



Viewed from the North



Current frontage with recent safety improvements..



Homes Across MD 355

C. The Master Plan

The property is located within the area of the *Clarksburg Master Plan*, approved and adopted in 1994. It is also within the transit corridor of that Plan (Master Plan, pp. 54-58), including properties fronting on MD Route 355. The Plan notes that the most significant planning challenge is to maintain the residential character of the area, while addressing the need for increased traffic capacity along MD Route 355. The Plan seeks to balance these competing needs.

Both Technical Staff and Petitioners' land use expert, Bill Landfair, opined that the revised project meets the goals of the Master Plan. Exhibit 57, p. 4 and Tr. 220-223. As stated by Mr. Landfair, this would be a "service use" rather than a residential use but,

The applicant has gone through great pains to make this proposed veterinary hospital and animal boarding facility as residential in appearance as possible. By necessity, the building is 6,000 plus square feet in size. But, the facade itself that's presented to the street compared to the nearby homes is relatively 58 feet. Other homes nearby range in width between 35 to 50 to 85 feet in width.

The building[] that [is] proposed, . . . would have the appearance of a one [and a] half story structure. Nearby homes are one, one and a half, two stories in height. We would say that the landscaping, again, the conservation easement that's proposed, all will contribute to this residential character that we are trying to build into this project. So, we will, that it will help, will contribute to maintaining that residential character.

Opposition witnesses Kim Shiley and Lynn Fantle felt that the proposed use would not preserve the residential character of the area, as recommended by the Master Plan. Ms. Shiley testified that, although the Master Plan does not have strict guidelines on special exceptions, one of the main objectives for this area was to retain residential, single-family, detached homes, while addressing a need for increased traffic along Route 355. She noted that properties fronting on Route 355 have been developed over many decades, and the most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along Route 355. According to Ms. Shiley, the Master Plan was very aware of what is now the high school, and around it was supposed to be residential use and the new middle school. Moreover, she felt that the

size and bulk of the proposed facility was incompatible with the adjacent church and nearby residences. Tr. 173-191. Ms. Fantle argued that the proposed parking area on a side lot was not compatible with the residential nature of the area, and that the Master Plan intended to concentrate commercial uses and uses such as this in the town center area, not along the Route 355 corridor. Tr. 192-206.

The Hearing Examiner understands the concerns of these witnesses, but is persuaded by a number of factors that the proposal is not inconsistent with the Master Plan. The Master Plan is silent as to the subject site itself; however, it supports the R-200 zoning for the property. Since the R-200 Zone permits the two special exception uses sought in this case, it is reasonable to conclude that the requested special exceptions are not, *per se*, inconsistent with the Master Plan.

Although this is a residentially zoned area, the fact is that the subject site is sandwiched between institutional uses, a church to the north and a large school (Rocky Hill Middle School) to the south. It is also very close to another large school, Clarksburg High School, to the north. It is therefore hard to say that this proposed service use is out of character with the area. In fact, the “Transit Corridor District Land Used Plan” shown on page 55 of the Master Plan shows the area of the subject site as being adjacent to areas planned for institutional and public park use.

Moreover, Petitioners’ revised project has gone far towards reducing the profile of the proposed structures and making them compatible with the neighborhood, as can be seen in the following front elevations (Exhibit 72):



Original Front Elevation on MD Rt. 355



Revised Front Elevation on MD Rt. 355

As pointed out by William Landfair, Petitioners' land planner, the front width of the proposed facility will not exceed the average front widths of residences in the neighborhood. Tr. 207-229. In addition, the structure will be set back about 132 feet from Route 355. The proposed parking facility, though not on a back lot, will be almost invisible from Route 355 because of a berm, landscaping and proposed fencing, according to the evidence. The Hearing Examiner also finds Technical Staff's analysis of compatibility in its supplemental report (Exhibit 57, pp. 7-8) to be persuasive:

Compatibility

The proposed development will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. (Note: part of the General Conditions)

Height

The height of the proposed structure, and the manner in which it is situated, is similar to the existing structures. The revised structure design will incorporate architectural design features to enhance its compatibility with the existing structures in the general neighborhood area and reduce impacts to neighboring properties. The revised height of the revised proposed structure is approximately eight (8) feet lower than that of the originally proposed structure. Very little of the proposed structure will be visible from the adjacent properties, and the mass of the structure is mitigated by the chamfered roof angles.

Visibility

The structure and the parking facility will be visible only from the roadway and from uses that are located directly across the roadway to the northeast. However, there is a significant amount of landscaped buffer between the proposed use and roadway. Existing green space will continue to be maintained. The proposed use will not result in an excessive concentration of special exception uses along major highway corridors.

Size of Structure

The 28.6% reduction in size of the structure, from a 9,264 sq ft. combination veterinary hospital and boarding place to a 6,610 sq. ft. combination veterinary hospital and boarding place, was done in response to the Board's comments on the original proposal. This reduction in size makes the structure more compatible than previously shown.

Width and Depth of Structure & Elevation

The Board also found at the March 9, 2006 Planning Board meeting that the width of the structure was too long. The applicant had presented a 78-foot wide structure. Now, the applicant has a revised elevation, which shows a 60-foot wide structure. This new elevation shows a significantly different structure, with more windows, a pitched roof, different columns, and an exterior rock wall foundation. This reduction in size makes the structure more compatible than previously shown.

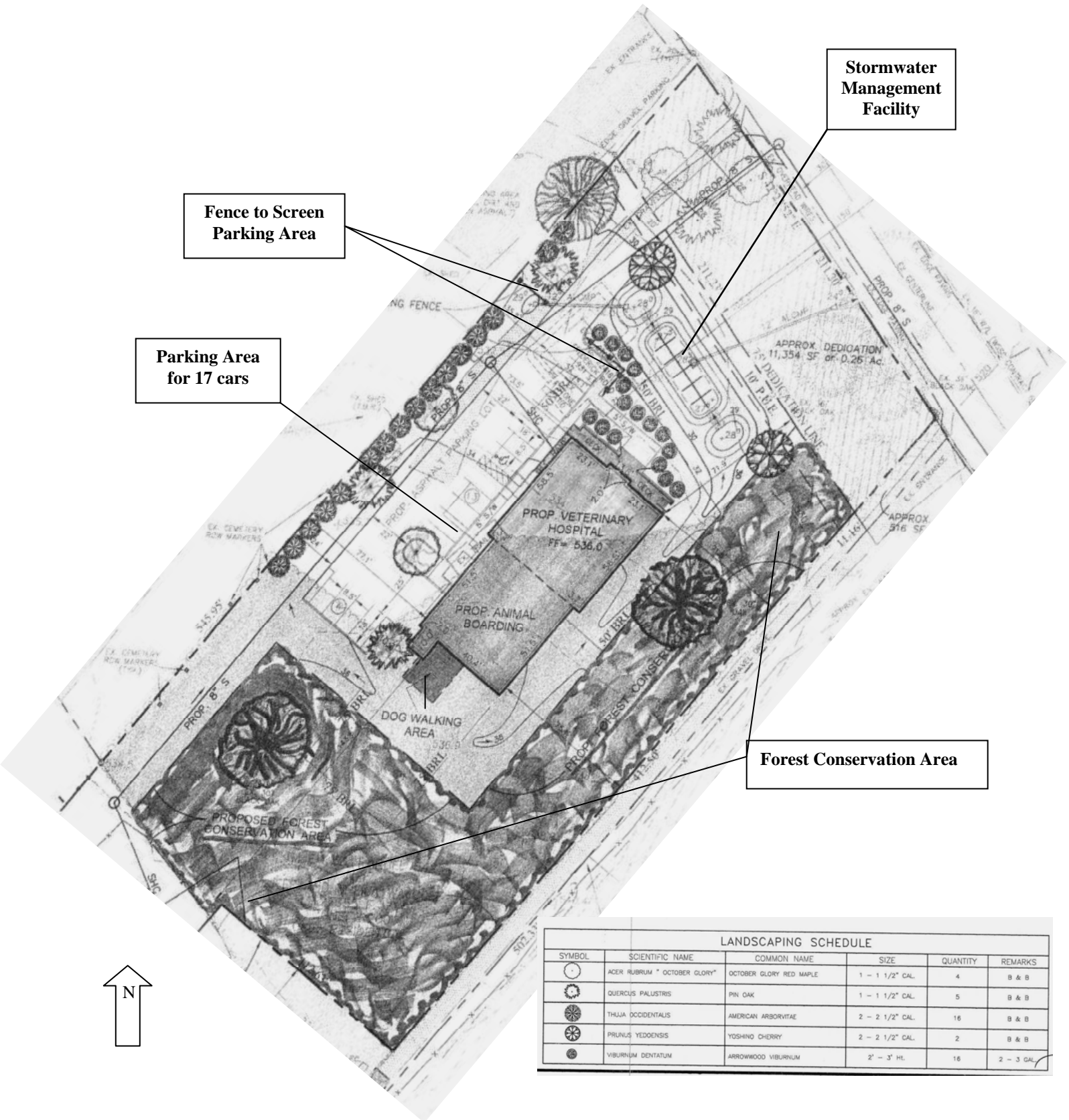
The applicant has also changed the depth of the structure and configuration of the rear. Originally the structure was 133 feet deep and now it is 124 feet deep. The configuration is changed slightly to accommodate a new design for the interior dog-run area. Although the depth of the house is greater than any other SF house in the immediate vicinity, the reduction in size makes the structure more compatible than previously shown. The structure's placement back from the roadway, and the way in which the structure is situated, makes this structure visually compatible with the other structures in the neighborhood.

Based on the entire record, the Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the *Clarksburg Master Plan* and that the proposed facility will be compatible with its surroundings.

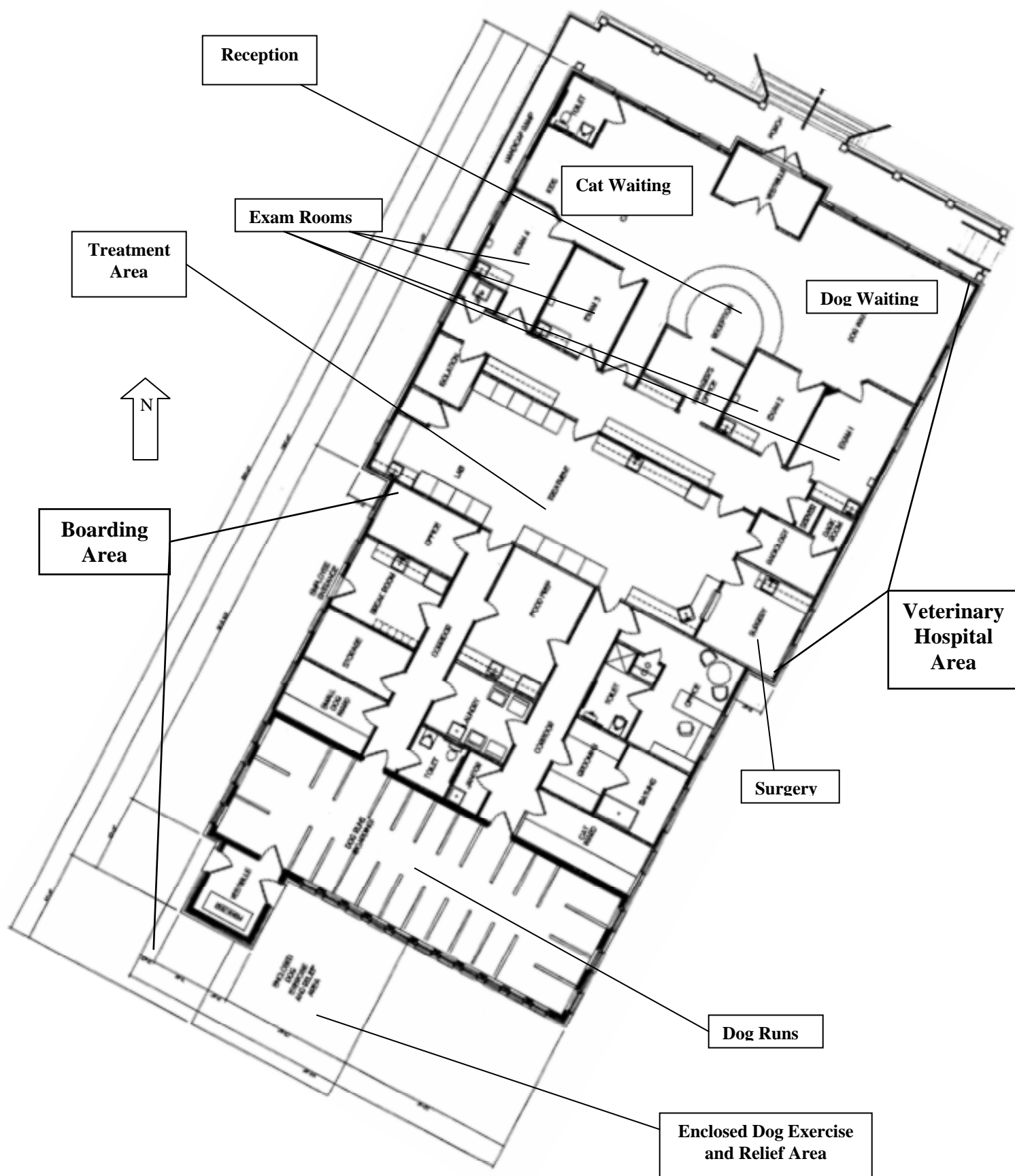
D. The Proposed Use

The application for S-2659 seeks a special exception pursuant to Section 59-G-2.32 of the Zoning Ordinance to permit construction and operation of the Bennett Creek Animal Hospital. The application for S-2660 seeks a special exception pursuant to Section 59-G-2.02 of the Zoning Ordinance to permit construction and operation of an animal boarding facility. The two facilities would be combined into one structure, with the boarding facility to the rear (*i.e.*, away from Route 355).

The locations of the proposed structure and its parking area (for 17 vehicles, including one handicapped accessible space) are shown below, in a reproduction of the central portion of Exhibit 64, the rendered version of the revised site and landscape plan, Exhibit 52(a):



The entire diagram from Exhibit 52(a) is shown on page 5, above. The floor plan for this facility (Exhibit 74) is shown on the following page:



The Structure:

The proposed structure would have an area of 6,610 square feet (replacing the existing 931 square foot house), with a pitched roof and residential scale windows, as shown on page 11, above. The height of the structure will be approximately 23 feet, and it will be sheathed in siding in the front and brick in the rear. Exterior walls, interior runs and boarding areas will all conform to sound buffering requirements, and there will be no outdoor runs or cages. The structure will be set back approximately 132 feet from MD Route 355. The lots must be subdivided prior to the construction, which may result in some changes to the site to allow for a lot line adjustment and road dedication.

Services Offered:

Petitioners describe the proposed use as a neighborhood veterinary hospital and boarding facility intended to serve the greater Clarksburg area with veterinary services, including veterinary care, overnight, indoor boarding and limited grooming and bathing services in the boarding area. Technical Staff confirmed that the veterinary practice would be general and would not offer specialized treatments. Care would be by appointment, and all animal hospital and animal boarding operations are contained within the proposed structure. The only goods sold on site would be prescription medicines and prescription pet food.

Staffing:

The combined facility would have a limit of 10 staff members on site, including all vets (up to 3), technicians, kennel helpers, interns, receptionists and other personnel. A groomer will come two to three times a week and count as one of those 10 staff members.

The Animals:

Dr. Walcoff proposes to board a maximum of 49 animals, only 23 of which may be large dogs (35 lbs. and over), because they require an indoor dog run, and there will be only 23 of those. The

dog runs are mostly 3 feet wide by 6 feet long, and four or five of them, the “luxury suites,”³ are closer to 5 feet by 6 feet. There would be 10 cat “condos,” a three part cage arrangement. Most of the time there will be far fewer than the maximum of 49 animals. Dr. Walcoff testified that during the school year, September through the end of May, he typically has on average three to eight animals total, dogs and cats on any given day, including weekends, except for the holidays. During the summer, June through August, he has, on average, 10 to 20, except for the holidays. On the holidays, which would be July 4th, New Year's, Christmas and Thanksgiving, he estimates probably 35 or more boarders.

Hours of Operation:

The combined facility would operate Monday through Friday, 7 a.m. to 8 p.m., and on Saturday from 7 a.m. to 1 p.m. Appointments would start at 9:00 a.m., Monday through Saturday. Monday through Friday, appointments are until 7:00 p.m., and the doors lock at 8:00 p.m. On Saturdays, there are appointments till 12:00 noon, but the doors do not close until 1:00 p.m., unless there is an emergency of some sort; however, this would not be an emergency clinic, and after-hour calls would be directed to such a clinic.

Sundays, there would be no appointments. After the doors are locked, the kennel help would be there taking care of the animals in the kennel facility. Kennel staff would come in three times a day on Sundays to walk the animals, as well as to feed, clean, and give them medicine if needed. The number of staff for the kennel would be determined by the number of kenneled animals, one for every 10 animals.

Access and Parking:

All traffic will enter the site at the entrance location on MD Route 355. The safety of this access was the subject of some debate at the hearing, as described below in Part II.E. of this report.

³ Despite what the reader may be thinking, the Hearing Examiner did not make up these names. Tr. 30-31.

For the reasons stated therein, the Hearing Examiner finds that, subject to rules and conditions which may be imposed at subdivision and/or by the State of Maryland, the proposal will not reduce the safety of vehicular or pedestrian traffic.

As to the parking facility, Technical Staff noted that the zoning ordinance does not provide a specific parking ratio for an animal hospital, but does for an animal boarding use. The requirement in Zoning Ordinance §59-G-2.02(b)(9) is one space for every employee on the maximum shift (in this case, 10) plus three (3), which results in a total requirement of 13 spaces. Petitioners will provide 17 parking spaces (including one that is van accessible), which exceeds the requirements of Section 59-G-2.02. Technical Staff believes that “four extra spaces will provide extra assurance that customers find a space for drop-off or pick-up without compromising the area under forest conservation or creating a problem, either with stormwater runoff or nuisance.” Exhibit 57, pp. 5-6. Petitioners’ original request for a parking waiver was withdrawn because the proposed facility now meets all the setback requirements for this parking facility called for in the Zoning Ordinance.

Noise Control:

The potential for the subject facility to create noise from barking dogs in a residential neighborhood is certainly a matter of concern. The Hearing Examiner’s approach to this issue must be governed by two overriding factors, both established as Montgomery County policy in the Zoning Ordinance. The first is that Zoning Ordinance §59-C-1.31 permits both veterinary hospitals and animal boarding facilities as special exceptions in the R-200 Zone (as well as in other residential zones). Since some noise from barking dogs would seem to be an inherent characteristic of such facilities, one must assume that a certain amount of such noise is not disqualifying.

The second is that both special exceptions have very strict and specific regulations governing noise. The Hearing Examiner concludes that when the Council sets very specific numerical standards in a special exception condition, it is those standards which should govern the evaluation. The

following condition, which tracks the statutory language, has therefore been recommended in Part V of this report:

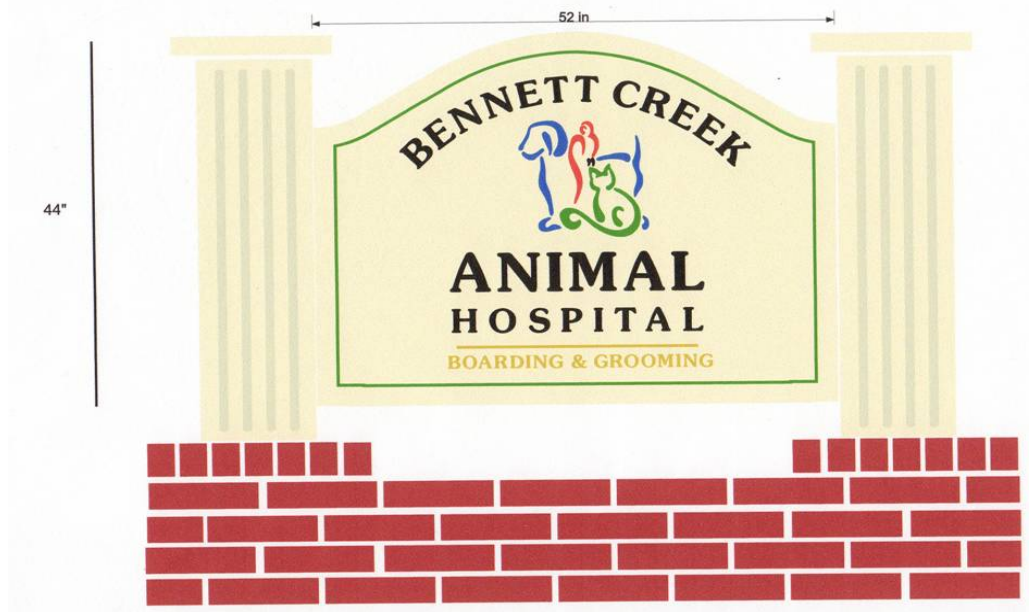
The proposed facilities must be designed and constructed in a manner that will insure noise levels within County standards, not to exceed 40 dBA within 10 feet of the facility. On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.

All the expert evidence in this case (acoustics expert, Kevin Miller (Tr. 54-69, Exhibits 10 and 38(d)) indicates that the expected noise from the facility will meet the very specific standards of the Zoning Ordinance, except in rare instances. Moreover, the absence of any outdoor dog walking and the inclusion of special acoustical designs and materials in the proposed facility should ameliorate noise conditions. Based on this record, the Hearing Examiner finds that Petitioners will be compliant with the applicable noise standards.

Signage:

Petitioners based their proposed sign design on the sign used by the Falls Road Veterinary Hospital at 10229 Falls Road, Potomac, also in the R-200 Zone. The proposed sign for the subject site would be built on a monument and contained within columns. It would measure 44 inches high and 52 inches wide, which is smaller than the sign for the adjacent John Wesley United Methodist Church. The suggested location of the sign is shown in Exhibit 87(a), and a copy of the sign Petitioners propose is set out in Exhibit 87(b) and reproduced below.

Cedar Posts and Fluting Trim detail
Brick base Common Brick-Sign area- 52" x 44"



Because the proposed sign exceeds the two square foot measurement ordinarily allowed in Zoning Ordinance §59-F-4.2(a) for residential zones, Petitioners will likely have to obtain a sign variance, in addition to a sign permit, at which point the permissible details can be worked out.⁴ According to Technical Staff, a site visit confirmed that the zoning notice sign (which is about the same size as the proposed entry sign) was visible enough to locate the site but did not overwhelm the site or surrounding neighborhood. A condition has been proposed requiring Petitioners to file a copy of any sign permit and variance with the Board of Appeals.

Lighting:

The parking lot lighting shown on the lighting plan and photometric study (Exhibit 38(h)) consists of four 15 foot poles located on the western side of the lot, which direct light onto the lot using shielded fixtures. Illuminated bollards are used on the pathway to the structure. The initial

⁴ Zoning Ordinance §59-F-4.2(a) generally limits signs in residential zones to two square feet; however an exception is made in §59-F-4.2(a)(3)(B) for “public facilities or places of assembly, such as places of worship, schools, libraries, museums, and hospitals.” While the Hearing Examiner doubts that a veterinary hospital will be considered to be covered by the use of the term “hospitals,” the Department of Permitting Services would have to address this issue in the first instance when it considers whether or not to issue a permit for the proposed sign.

draft of the lighting diagram indicated that some projected lighting measurements exceeded 0.1 foot candles at the side property line, but after the issue was raised by Technical Staff, Petitioners' lighting consultant revised the proposed fixtures to a full or zero cut-off design (Exhibit 38(i)). According to Technical Staff, the new light fixture design satisfies the luminaries design provision of the Zoning Ordinance, and the revised photometric study (Exhibit 38(h)) indicates that this choice of fixture has mitigated the spread of light such that there is no light exceeding 0.1 foot candles at the side or rear property line. Given that the parking lot is opposite a residential area, the Hearing Examiner also recommends a condition in Part V of this report that the parking lot lights be turned off when the facility is not open, except as required for safety.

Landscaping and Fencing:

The proposed landscaping plan shows Viburnum shrubs framed with two Yoshino Cherry trees in the front of the structure. On the northwest property line, American Arborvitae trees will be planted to screen the parking lot and the facility itself. The issue of whether a fence should be erected along the northwest property line was discussed with the neighbors, as is elaborated upon in Part II.E. of this report, and based on their input, the Hearing Examiner found that the vegetative screening shown on the revised site and landscaping plan (Exhibit 52(a)) was preferable in this area. However, a board-on-board screening fence will be erected on either side of the driveway at the building frontage, with vegetation in front of it, consistent with the wishes of the neighbors who will directly view it from across Maryland Route 355.

Environment:

Technical Staff notes no outstanding environmental issues. Environmental Staff recommended approval of the Preliminary Forest Conservation Plan and the Special Protection Area Water Quality Plan. In accordance with the recommendations of the Planning Board (Exhibit 58), the Hearing Examiner has suggested compliance with these plans as a condition of the special exception.

E. Community Response

As mentioned in Part I of this report, most of the letters filed in this case supported the proposed special exceptions. Some of the opposition letters (including one from the Clarksburg Civic Association) objected only to the proposed boarding facility (Exhibit 33). Other letters expressed fears of noise from the proposed facilities and impact on the residential nature of the area. A final letter from the President of the Clarksburg Civic Association (Exhibit 59), reiterated concerns about maintaining the residential character of the area and asked that consideration be given to erection of a three-foot-high brick wall along Maryland Route 355 and to protection of the gravestones on the site.

At the hearing, four witnesses appeared in support of the project, Jack Chomko, Karen Smith, Nancy Hammer and Eric Myers. Some of this supporting testimony was a tribute to Dr. Walcoff's excellence as a veterinarian, rather than a commentary on land use issues; however, two of the witnesses, Jack Chomko and Karen Smith, live across Route 355 from the subject site, and they support the proposed facility as a neighboring land use. Three witnesses appeared in opposition, Kim Shiley and Lynn Fantle, who testified on behalf of the Clarksburg Town Center Advisory Committee (CTCAC), and James Gregg, a neighbor who lives just to the northwest (on the south side of Running Brook Drive).

Much of the testimony by the CTCAC concerned Master Plan compliance and compatibility concerns, all of which was discussed above in Part II.C of this report. The CTCAC witnesses also expressed a preference for a three foot high brick wall to screen the parking, rather than the four foot high wood or plastic fence proposed by Petitioners. They also would prefer a sign imbedded in that wall, parallel to Route 355, while Petitioners propose a sign perpendicular to Route 355.

As to the wall itself, the Hearing Examiner is persuaded by the testimony of the neighbors who will see the screening fence the most, those who live directly across from the site. Karen Smith, who lives just across Route 355 from the site testified that a brick wall would look "tacky," and she

would prefer to see a residential style fence plus vegetation, as proposed by Petitioners. Tr. 118. Similar testimony was given by Jack Chomko, who lives across Route 355 from the site, though not directly across. He felt that a brick wall would “stand out” in this setting. Tr. 107-116. Dr. Walcott also testified that the other neighbor directly across from the site had the same position, feeling that a brick wall would make it look more commercial. Petitioners contemplate a white, board-on-board fence, with vegetation in front of it. Tr. 255-266. A condition is recommended in Part V of this report requiring the board-on-board fence, with vegetation in front of it.

Since the Hearing Examiner is not recommending a brick wall in front of the parking lot, CTCAC’s request for a sign embedded in that brick wall cannot be recommended. Petitioners based their sign design on the Falls Road Veterinary Hospital at 10229 Falls Road, Potomac, also in the R-200 Zone. A copy of the sign Petitioners want is set out in Exhibit 87(b) and shown in Part II.D. of this report. The proposed location of the sign is indicated in Exhibit 87(a), and that exhibit shows the sign as perpendicular to the Route 355. Given the traffic conditions in the area, the Hearing Examiner believes that a perpendicular sign might be more easily seen by those riding on Rt. 355 searching for the facility, and it would therefore be less dangerous. In any event, because the proposed sign exceeds the two square foot measurement allowed in Zoning Ordinance §59-F-4.2(a) for residential zones, Petitioners may have to obtain a sign variance, at which point the permissible details can be worked out. This issue is discussed in Part II.D., above.

We now turn to the issues raised by James Gregg. Although separated from the subject site by the cemetery behind the John Wesley Methodist Church, Mr. Gregg expressed concern about the potential for noise. He also testified that there was a traffic safety issue with the proposed exit from the site, and he felt that he and others on his street had not been consulted sufficiently because of their race.

At the request of the Hearing Examiner (Tr. 260-262) , Petitioners attempted to converse with Mr. Gregg after the hearing about his preferences for the site. Mr. Gregg reportedly informed

Petitioners that he was no longer interested in having input. See Exhibits 88 through 94.

Nevertheless, the record was held open until October 10, 2006, to give Petitioners' counsel the opportunity to meet with the representatives of the adjacent John Wesley United Methodist Church and the neighbors living on south side of Running Brook Drive, in order to determine if a consensus could be reached on the desirability of erecting a fence along the northwest property line.⁵

After unsuccessful efforts by Petitioners to arrange such a meeting, the Hearing Examiner issued an order, on October 17, 2006, reopening the record until further notice solely to provide representatives of the John Wesley United Methodist Church and neighbors living on the south side of Running Brook Drive the opportunity to submit evidence regarding the advisability of erecting a fence along the northwest property line.

Subsequently, Petitioners' attorney submitted two letters (Exhibits 91 and 92) outlining his efforts to meet with Church officials and neighbors living on the south side of Running Brook Drive. The first letter, dated November 15, 2006 (Exhibit 91) recited that the neighbors living on the south side of Running Brook Drive (*i.e.*, James Gregg and Mrs. Harper) took no position on the property-line screening fence issue. The second letter, dated December 11, 2006 (Exhibit 92) reported that the Church did not want a fence on the property line, but sought some conditions protecting the gravestones located there. The substance of this letter was confirmed by an e-mail from Technical Staffer Nellie Maskal to the Hearing Examiner on December 13, 2006 (Exhibit 93). The record was then closed, effective December 26, 2006 (Exhibit 94).

Given the positions taken by the adjacent Church and the elective silence on the fence issue by the neighbors living on the south side of Running Brook Drive, the Hearing Examiner concludes that it would not be beneficial to require Petitioners to erect a fence on their northwest property line.

⁵ It should be noted that the property line fence discussed here has nothing to do with the parking lot screening fence which will be erected as shown on the revised site plan, Exhibit 52(a).

Instead, the vegetative screening shown on the revised Site and Landscape Plan (Exhibits 52(a) and 64) will be required, and a condition has been recommended to protect the sanctity of the gravestones straddling the property line, in accordance with the wishes of the Church.

Both the noise and traffic safety issues raised by the community are legitimate concerns; however both can be handled by appropriate conditions which have been recommended. While the Hearing Examiner is also concerned about the possibility of noise from barking dogs in a residential community, all the expert evidence in this case (acoustics expert, Kevin Miller (Tr. 54-69, Exhibits 10 and 38(d)) indicates that the expected noise from the facility will meet the very specific standards of the Zoning Ordinance. Therefore, the Hearing Examiner recommends a condition which requires Petitioners to meet those standards. Moreover, the absence of any outdoor dog walking and the inclusion of special acoustical designs and materials in the proposed facility should ameliorate noise conditions.

Traffic safety issues also trouble the Hearing Examiner. The evidence indicates there is a large volume of traffic on Route 355 in this area, and according to Mr. Gregg, it is often impossible to safely turn left (*i.e.*, northbound) onto Route 355 from Running Brook Drive. Moreover, the view of northbound Route 355 traffic from the proposed driveway will be limited by the hill and curve immediately to the south. Nevertheless, the only testimony by a traffic engineer in this case, given by Stephen Peterson (Tr. 135-163), is that the arrangement will be safe and efficient.

Mr. Peterson designed the traffic controls north and south of the subject site under State specifications, and he testified that these signals create sufficient gaps in the traffic flow along Route 355 for cars to safely turn left into and out of the subject site. Where they cannot do so, they have the option of proceeding up to the light and u-turning. More importantly, this whole issue will be reviewed at subdivision, and the State of Maryland will ultimately determine the location and safety rules governing the driveway access to its Route 355, which may include right-turn-in and right-turn-

out limitations. As required by Zoning Ordinance §59-G-1.21(9)(i), a condition is recommended requiring subdivision approval for this special exception. Based on this record, and subject to rules and conditions imposed at subdivision and/or by the State of Maryland, the Hearing Examiner finds that the balance of evidence available at this time supports a finding that the proposal will not reduce the safety of vehicular or pedestrian traffic.

III. SUMMARY OF THE HEARING

Petitioner called six witnesses at the hearing, Petitioner Jeffrey Walcoff; Kevin Miller, an expert in acoustics; Gerald Lee Miller, an engineer; Stephen Peterson, an expert in traffic engineering and transportation planning; Alan Clapp, an architect; and William Landfair, an expert in land planning. Four community witnesses, Jack Chomko, Karen Smith, Nancy Hummer and Eric Myers, testified in support of the project. Three community witnesses testified against the project – Kim Shiley and Lynn Fantle (both on behalf of the Clarksburg Town Center Advisory Committee), and James Gregg, a neighbor who lives on the south side of Running Brook Drive.

A. Petitioners' Case

1. Jeffrey Walcoff (Tr. 11-51; 255-266):

Jeffrey Walcoff, DVM, testified that he is a veterinarian who has been in practice for 12 years. Currently his practice is in Frederick, Maryland, and it entails both a veterinary medicine practice and a boarding facility, as is currently proposed. He does well visit checkups and vaccines, as well as care of sick animals and surgery, both minor and major.

Dr. Walcoff described his search for the subject site and his acquisition of both lots that comprise it. He intends to subdivide the two lots and sell off the existing house on the back lot. A new free-standing structure would be built and his practice would offer veterinary clinic services, including examination, treatment, surgery, grooming and boarding of animals, but nothing larger than

a big dog. There would be three veterinarians, not to exceed ten total staff members at one time (including vets, technicians, kennel helpers, interns, receptionists and other personnel). A groomer will come two to three times a week and count as one of those staff members.

In the hospital, there would be a receptionist, veterinarians and veterinary technicians; in the kennel, there would be staff to take care of the dogs in the boarding facility. The day starts at 7:00 a.m. when the receptionist and technicians and kennel helpers arrive. The kennel helpers take care of the dogs and cats, feeding them, walking them, cleaning, doing everything that's necessary for their well-being.

The doctors will probably come in around 8:00-8:30 a.m. to do exams on sick animals in the hospital before the clients start to show up with their animals. Appointments would start at 9:00 a.m., Monday through Saturday. Monday through Friday, appointments are until 7:00 p.m., and the doors lock at 8:00 p.m. Saturdays there are appointments till 12:00 noon, but the doors do not close until 1:00 p.m., unless there is an emergency of some sort; however, this would not be an emergency clinic, and after-hour calls would be directed to such a clinic. Sundays, there would be no appointments. After the doors are locked, the kennel help would be there taking care of the animals in the kennel facility. They would come in three times a day to walk them, feed them, clean, do anything necessary, and give them medicine if they need medicine. The number of staff for the kennel would be determined by the number of kenneled animals, one for every 10 animals.

Petitioners keep a computer log of appointments in their present operation, and there are rarely any "walk-in" visits. The computer log at the proposed facility would be available for inspection by the Department of Permitting Services (DPS).

Dr. Walcoff further testified that he could not have an outdoor dog-walking area because there is no area less than 200 feet from the property line, as called for in the Zoning Ordinance. Therefore, he devised an indoor dog walk area, which would be like a greenhouse, enclosed by glass, with some

vegetation to encourage dogs to urinate or defecate, as need be. It would be located at the very rear of the property, and not visible from the road. According to Dr. Walcoff, dogs rarely bark when sniffing in contemplation of relieving themselves. They will be walked on a leash, even though in an enclosed area, and feces will be immediately cleaned up. Waste is double bagged and put it in a waste container that's picked up a couple of times a week by a contractor, Waste Management.

Dr. Walcoff feels that the boarding operation is an intrinsic part of the package of services. Many clients, when they board their animals at his facility, tell him repeatedly how happy they are to have a boarding facility there because there is a veterinarian there that can take care of the animal if there is a problem. According to Dr. Walcoff, a lot of dogs, when they board, do have problems such as vomiting and diarrhea. A vet, on site, can address the problem immediately.

Dr. Walcoff proposes a maximum of 49 animals, only 23 of which may be large dogs (35 lbs. and over), because they require an indoor dog run, and there will be only 23 of those. The dog runs are mostly 3 feet wide by 6 feet long, and four or five of them, the "luxury suites," are closer to 5 feet by 6 feet. There would be 10 cat "condos," a three part cage arrangement. Most of the time there will be far fewer than the maximum of 49 animals. Dr. Walcoff testified that during the school year, September through the end of May, he typically has on average three to eight animals total, dogs and cats on any given day, including weekends, except for the holidays. During the summer, June through August, he has, on average, 10 to 20, except for the holidays. On the holidays, which would be July 4th, New Year's, Christmas and Thanksgiving, he estimates probably 35 or more boarders. The only goods he would sell on site is prescription pet food.

In Dr. Walcoff's opinion the planned facility would have a residential look and be harmonious with the community. The coming and goings of cars and staff and the level of activity associated with people walking their pets in the building, can be conducted in a harmonious way with the surrounding

neighborhood, and the level of noise and lights will not be bothersome to surrounding properties. Dr. Walcoff indicated that he had no intention of bothering the grave sites on the property line.

Dr. Walcoff plans to sell New Parcel Two back to the Kornblatts, who currently rent it from him, after the subdivision. Dr. Walcoff reports that the two neighbors directly across Route 355 from the subject site want a wooden fence, rather than a brick wall, to screen the parking lot because a brick wall would make it look more commercial. Petitioners contemplate a white, board on board fence with vegetation in front of it.

2. Kevin Miller (Tr. 54-69):

Kevin Miller testified as an expert in acoustics. He testified that he did two reports, one dated September 7, 2005 (Exhibit 10) analyzing noise which would likely be generated by the proposed facility, and the other dated February 6, 2006 (Exhibit 38(d)), to explain the noise reduction from having an enclosed dog walk area.

Mr. Miller testified that the zoning ordinance has two requirements, one is not to exceed 50 dBA at night and 60 dBA during the day at the property line, and the other is not to exceed 40 dBA within 10 feet of the structure. His firm assessed the proposed design of the facility and made calculations based on past experience with similar facilities. He determined that, as originally designed, it likely would not have met those criteria. So, Mr. Miller recommended upgrades to assure that it would meet those two criteria. It is his understanding that the enclosed walking facility would only be used during the daytime. His experience has been that normally an individual or a small number of animals on leashes “just don't act up.” In his opinion, even a moderately high noise level inside that enclosure should still meet the 60 dBA requirement at the property line.

Mr. Miller also opined that the proposed use can be conducted in a way that will not have any objectionable activity, particularly noise, that would be bothersome to the surrounding

properties. On cross-examination, Mr. Miller indicated that in worst case scenarios (where a number of dogs all happen to bark at a particularly high level at once) you may exceed the noise parameters briefly, and this may occur 3 or 4 times a day. He also testified that the daytime or nighttime ambient noise level will vary on a regular basis and so there's no way to practically establish what that level is. According to Mr. Miller, 40 dBA is a very quiet background level, and birds chirping or an air conditioner running will drive it well over 40. The average person will say a 3 decibel change is a little noisier, if going up, or a little quieter, if going down. A ten decibel change is perceived as twice or half as loud, subjectively, depending on whether it is going up or down.

3. Gerald Lee Miller (Tr. 70-106):

Gerald Lee Miller testified as an expert in civil engineering. He described Petitioners' purchase and assemblage of two lots to achieve the required two-acre lot size for the subject site after subdivision, which leaves .68 acres for a second, post-subdivision lot. The new parcels will be "New parcel One," containing the subject site and "New Parcel Two," containing the existing house on the southeast corner of the site, all of which is shown in Exhibit 52(a), the revised site plan, and Exhibit 64, the rendered version of that plan.

Four specimen trees on the property will be preserved. There are grave stones on the northwestern property line, which will not be disturbed. There is no fence planned for this area, but plantings would be used to screen the parking from the adjacent church. There is a fence around the southern and rear property lines, where the site borders the new middle school, and a 4 foot wood fence (or possibly plastic), would be erected to screen the parking lot from view on the front of the property. The lot would hold 17 cars.

According to Mr. Miller, the driveway will be placed in the optimal location. A line of sight investigation was done at the beginning of the project. There will be excellent sight distance to the north and about 385 feet to the south.

Mr. Miller further testified that the proposed building and parking meet all of the setback requirements and dimensional requirements set forth in the zoning ordinance. A proposed forest conservation area (marked on Exhibit 52(a) and shown in dark green on Exhibit 64), would be put in a forest conservation easement, which meets the acreage requirements and the minimum width requirements according to the ordinance. It will provide very dense screening to the south and west of the property. On the northern side of the property, there would be some proposed maple trees and a line of bushes along the front of the proposed building. Those would be viburnum which is a bush that would be well maintained, probably about 3, 4, or 5 feet high maximum. An existing specimen tree, just off the property, will be protected. Petitioners would be planting a line of screening along this western [northern] property line consisting of American arborvitae, which is a very dense, and grows 20-25 feet high. In Mr. Miller's opinion, if somebody were driving south on Route 355, they would not really be able to see the site "very much at all" because of the existing trees and the screening being proposed. Given the increased elevation from the roadway to the parking area, by adding a 4 foot fence to the plantings facing Route 355, all you would actually see of the parking lot would be the top of the first car or maybe two as you would be driving by.

Mr. Miller further testified that there was more than adequate water service available to the site. Sewer service is located behind a home (Lot 7, owned by Kevin and Karen Smith) across Maryland Rt. 355, and Petitioners have reached an agreement with the homeowners to run a connection to the subject site through their property. Details involving the state and crossing Maryland Rt. 355 will be worked out at subdivision. In Mr. Miller's opinion, the facilities would be adequate. Mr. Miller also indicated that the site is in a special protection area, and DPS has approved

a stormwater management concept plan for the site. The proposed storm water management facility would be a depressed dry pond about 18 to 24 inches deep, which will blend in with the grass and be barely visible from the road.

[Petitioners' attorney, Jody Kline, indicated that Petitioners wouldn't have a problem with a condition allowing the adjacent church to come onto Petitioners' land (approximately a two-foot wide strip on the northwest property line) to maintain the gravestones in the border area.]

The proposed location of the sign was discussed [ultimately resulting in submission of Exhibits 87(a) and (b), describing the intended sign and showing its proposed location].

4. Stephen Peterson (Tr. 135-163):

Stephen Peterson testified as an expert in traffic engineering and transportation planning. He surveyed Dr. Walcoff's present practice in December and April to determine the likely number of trips that would be generated. He also looked to a similar veterinary hospital and boarding facility, Peach Tree Veterinary Facility on Route 28, to get comparative data, because the usual professional source for trip generation data, the transportation engineers manual, has no entry for vet clinics. At the Peach Tree Clinic, which is larger than proposed here, the evening peak hour produced 22 trips. During the morning peak hour the facility was closed.

Mr. Peterson estimated a trip rate based on the number of examining rooms and came up with a ratio of 5 to 6 trips per examining room. The proposed facility would have four examining rooms, and therefore, a trip generation of 24 during the peak hour of the peak periods. He concluded that all the data he was able to gather demonstrates that this use will not exceed the 30 trip threshold specified in the Local Area Transportation Review (LATR), and therefore does not require a full-blown traffic impact study.

Mr. Peterson opined that there would be no adverse impact on the transportation network or any congestion that would be created by the proposed use. The parking lot is along the northwest

side of the building and people have direct access to the building from there. There is a single driveway that allows left and right turns in and left and right turns out. In his opinion, this arrangement is safe and efficient for both vehicular and pedestrian traffic.

Mr. Peterson did a traffic study for the new Clarksburg High School and the new Rocky Hill Middle School, and he recommended traffic signals at Forman Boulevard and Little Seneca Parkway, which have since been installed (and are marked with red “Xs” on Exhibit 65). Those signals create gaps in the traffic allowing cars to more easily enter and exit the proposed facility. The anticipation is that by virtue of Dr. Walcoff’s location on the southbound side of Route 355, his trips in the morning with right turns in and right turns out will be easy to make. In the evening, it may be a little more difficult to make a left turn out of the site, but there is the opportunity to turn right and use the traffic signal at Little Seneca Parkway, which is a couple of hundred yards south of the site, to be able to turn around. The opportunities provided by the traffic signals that have been installed can make this operation perfectly safe and acceptable. In spite of the 5% grade, vehicles coming north would have “good visibility up the hill” approaching the subject site from Little Seneca Parkway. The speed limit is 40 mile per hour.

After Petitioners have gone through this portion of the approval process, their next step is to create a preliminary plan of subdivision. Then finally, the State Highway Administration must issue a site access permit. Whether the proposed driveway will be limited to right turn in and right turn out will all become part of the determination by the state of what needs to be done at the site driveway in order to create a safe operation.

5. Alan Clapp (Tr. 164-172; 189-190):

Alan Clapp testified as an expert in an architecture. He stated that the dimensional information in the technical staff report on the dimensions, setbacks, and heights of the buildings was accurate. The architects started off planning a larger building, and over a period of time it's been cut

down to meet the objections that were made to the original building. Exhibit 72 shows two original front elevation choices on the top and two revised front elevation choices on the bottom. The originals were taller and wider. The final front elevation selected is on the bottom right hand corner of Exhibit 72, which is only approximately 20' 4" high, having dropped some 6.5 to 7 feet. The front width is 52.8 feet.⁶

Petitioners have gone to a very residential appearance. On the upper right-hand corner of Exhibit 72, there were store front sections for glass and a much taller ceiling. Now, the ceiling height and windows have been lowered. There are double hung windows and multi-pane inference windows, with a very residential appearance throughout the entire building. Petitioners have tried to lighten the appearance as much as possible from both sides, using hip roof to eliminate the high peaks on each end of the building. The same is true of the side elevations shown in Exhibit 73, where the walls are all brick and stone with double pane glass. The architects worked with the acoustic engineer to make sure that they have eliminated as much sound transmission as they can from the inside of the building. The materials, double hung windows and shutters, are the elements that you see in just about every residence.

In Mr. Clapp's opinion, the proposed building is harmonious with the character, and particularly the architectural style of the surrounding neighborhood. The side elevations shown on Exhibit 73, are long (132 feet including the enclosed dog walk area), but they're broken up by the ins and outs of the walls and by the roof patterns, by the hips, by the gables, and all of the other elements. The structure is very well screened by the forest preserve on the south and the church and the other landscaping that is planned on the north.

⁶ Mr. Clapp corrected this figure in a letter for the record (Exhibit 85(a)), in which he stated that the front width was actually 60 feet. The 52.8 foot measurement is the dimension of a middle section of the building. He noted that the 60 foot width is still consistent with the average widths of residences facing the subject site across Route 355.

Mr. Clapp did not have an opinion as to whether a brick fence or a wood fence would be architecturally superior for the parking lot screening fence.

6. William Landfair (Tr. 207-229):

William Landfair testified as an expert in land planning. Technical Staff defined the general neighborhood as including all of the non-school, single-family residential properties along MD 355 (Frederick Road) and the single-family residential properties along Running Brook Drive. Mr. Landfair testified that the general neighborhood should include Clarksburg High School and Rocky Hill Middle School, which surround the subject site. The area is primarily residential in nature, but according to Mr. Landfair, you have to take into consideration the institutional uses, the two schools themselves, the park, and the church.

Mr. Landfair testified that the subject site is in the R-200 Zone, but there is also R-200-TDR within the general neighborhood. There are no other special exceptions in the area. In his opinion, granting this special exception would not alter the residential character of the neighborhood.

Mr. Landfair agreed with Technical Staff that the daily trips associated with the comings and goings of staff, customers with their pets, patients arriving and departing the site, and similar activity would be an inherent characteristic that you're going to find with every animal boarding facility or veterinary hospital. There will be deliveries of supplies, intermittent servicing of equipment, litter, animal waste, kennels and exercise areas for the housing and care of the animals. The non-inherent characteristics are the fact that we have these two facilities together operating on one site, the size of the building and the size of the parking area.

In this instance, his opinion is that the setbacks, landscaping, and screening will mitigate the view of the parking from the adjoining properties and from the roadway itself. Great effort has been made to downsize the building to the extent possible and to give it a more residential appearance. The building itself is large, but, the facade it presents to the roadway is relatively small and quite

comparable to what those residences present to the street. The forest conservation easement will provide substantial buffer along the south and west sides of the property. So, particularly for those motorists coming to the north along 355, the view of the site itself will be well screened immediately. Parking cannot be located in the rear because of storm water management considerations and because of the placement of that conservation easement. Nevertheless, with the setbacks, the landscaping and the screening, parking will be adequately screened.

Mr. Landfair further testified that lighting typically is provided for safety and security. The lighting plan that was prepared by a company called L.S. Grimm, Inc., and their photometric plan shows the spread of light on the property (Exhibit 38(h)). They've provided technical information on the light fixtures themselves including the cut sheets (Exhibit 38(i)). There are two types of fixtures proposed, bollard style and a full mounted style. The standard for measuring lighting impact in residential zones is found under 59-G-1.23 of the ordinance. The spread of light across the side property line, which would be the common property line with the church, does not exceed 0.1 foot candles, and this is the standard the zoning ordinance relies upon in determining whether or not there's an adverse impact. The light fixtures themselves are designed to avoid glare and as the ordinance puts it, light trespass onto adjacent properties.

According to Mr. Landfair, deliveries to the property will typically be made by common carriers that would already be found in the neighborhood. The hours of operation will be limited, and Technical Staff has proposed hours of operation which Petitioners are willing to abide by. Logs will be kept, verifying the hours of operation. Visits for the most part will be by appointment. Most of the activity itself will take place within the building, including the kennels and exercise areas. Soundproofing will be provided to attenuate the noise levels, and based on the design of the building, the site layout, the proposed screening, the landscaping, topography, conservation of the trees, and the limits on the hours of operation, Mr. Landfair's opinion is that there are no inherent or non-inherent

effects that will adversely affect the adjoining properties or neighborhood. He also opined that from the north, the proposed berm and screening would prevent a view of the parking lot. He feels that the fence should be as understated as possible, but, even without the fence, the berming and the landscaping that are proposed and the change in grade with the property rising up again about six or seven feet from the roadway, all contribute to effective screening of the parking.

In Mr. Landfair's opinion, the project is in conformance with the Master Plan. The subject property is located within an area that's covered by the 1994 Clarksburg Master Plan, and specifically within the transit corridor of that plan which is described on pages 54 to 58.⁷ As described by that Plan, the district includes properties fronting on MD 355 which were developed over many decades in accordance with the Plan and in accord with the traditional patterns found elsewhere in the up-county – single family detached lots fronting the roadway. The Plan states the most significant planning challenge here is to maintain and continue the residential character while addressing the need for increased traffic capacity along MD 355. It also has objectives, two of which relate back to that. Continue the present residential character along MD 355 and balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character.

According to Mr. Landfair, the Petitioners gone through great pains to make this proposed veterinary hospital and animal boarding facility as residential in appearance as possible. The building is 6,000 plus square feet in size, but the facade itself, at about 58 feet, is relatively average compared to the nearby homes, which range in width from 35 to 50 to 85 feet. The building that is proposed would have the appearance of a one [and a] half story structure. Nearby homes are one, one and a half, or two stories in height. The landscaping and the conservation easement that's proposed all will contribute to this residential character. It's not a commercial use. It's a service use, but Petitioners are

⁷ The transcript uses the number "258," rather than the words "to 58." The former must be incorrect because the Clarksburg Plan has no page 258, and the relevant part of the Plan does run from page 54 to page 58.

trying very much to make it as residential in appearance as possible. This particular special exception is allowed in almost every single-family residential zone in the county.

Mr. Landfair further testified that the Master Plan is silent with respect to this particular site. There are no specific recommendations for this property. So, we must infer that because it supports the R-200 zoning for the property, and because these two special exception uses are allowed in that zone, that the Master Plan does support these two uses. It's been legislatively determined by the County Council to be acceptable in this zone so long as it can be found that the special exception standards for the use are met. In this instance, on this particular site, he opined that those standards will be met, and Petitioners are not adversely affecting the predominantly residential character of the neighborhood.

Mr. Landfair then indicated the front widths of other nearby houses shown on Exhibit No. 64, the rendered site plan. On the east side of 355 there are four houses which are identified by lot, Lots 9, 8, 7, 6. On Lot 9, the residence is 85 feet in width. Others measure 50 feet, 35 feet and 70 feet. Mr. Gregg's house measures in at 75 feet in width along Running Brook Drive, to the north.

Mr. Landfair testified that the proposed veterinary clinic and boarding facility will not have any impact upon the residents that front on Running Brook Drive. What they will see will be across the church property itself, and that view will be screened, or at least mitigated, by this landscaping that will be along the property line. A fence could be used, but is probably not necessary. There are trees there today, mature trees which would supplement any landscaping that Petitioners would provide.

B. Community Witnesses In Support

1. Jack Chomko (Tr. 107-116):

Jack Chomko testified that he lives at 22505 Frederick Road on Lot 3 (as marked in red on Exhibit 12) across Maryland Route 355 from the subject site. His is the second house to the north of

Running Brook Drive. He and the neighbors that he has talked to have no problem with the proposed facility. The house currently on the subject site has been in disarray for a number of years. Mr. Chomko has a dog and the neighbors have cats, so the proposed facility would be useful to them. He does not favor a brick fence, as proposed by Clarksburg Civic Association (CCA), because it would stand out in this setting. Mr. Chomko noted that there has been a lot of change in the area, and this facility would not be a negative change. Traffic has slowed down on Route 355 since lights were installed at the two schools, one north and one south of the site. The speed limit at the site is 40 m.p.h.

2. Karen Smith (Tr. 117-123):

Karen Smith testified that she lives at 22413 Frederick Road, on Lot 7 (as marked in red on Exhibit 12), directly across Route 355 from the subject site. She moved into her house five years ago, and despite what the realtor told her, new homes were built behind her house. Although she was disappointed about that, the proposed veterinary hospital doesn't bother her. "It looks like a beautiful home going up across the street. The landscaping on the picture that he showed me looked beautiful." Mrs. Smith did object to the stone wall the CCA wanted installed, characterizing it as "very tacky."

Petitioners did approach her husband about running a sewage line across her property, and while there is nothing in writing, "I don't think that it would be a problem." Mrs. Smith prefers a veterinary hospital to a commercial use such as a "7-11," feeling that it is a less intensive use than other possibilities. The vet hospital will be operating mostly while she is at work, and will not create a constant traffic flow.

3. Nancy Hummer (Tr. 124-127):

Nancy Hammer testified that she lives in Boyds, Maryland, about 3.5 to 4 miles away from the subject site. She extolled Dr. Walcoff's virtues as a skillful and caring veterinarian. She has

known him for 5 or 6 years, and takes her pets to him. “Everything's clean as it can be.” She believes the Clarksburg area would support his facility, and it would provide jobs for local residents. It “would be an asset and a blessing to have him there.”

4. Eric Myers (Tr. 128-133):

Eric Myers testified that he lives in Clarksburg, about 5 or 6 miles away from the subject site. In Mr. Myers’ opinion, the building will fit into the area, with its rustic appearance and moderate size. The facility will be located between two separate schools and a church. It has been redesigned a few times to make it smaller “to appease some of those who oppose this project.” According to Mr. Myers, the size and design of the building is not out of the ordinary for the area, and “it would be a significant improvement to what's there now currently.” In his opinion, it does fit in with the Master Plan, and traffic will not be impacted.

When Mr. Myers travels out of town, which is frequently, he has nowhere to keep his pets and must rely on family and friends to watch after them. Having a licensed veterinarian that is trusted to keep his pets “provides a fantastic service” for the community. He noted that Clarksburg is building thousands of homes and has many pets that need veterinary care. Dr. Walcoff has proved himself to Mr. Myers’ family several times, “being available to my pets . . . 24/7.” Dr. Walcoff even took a dog belonging to Mr. Myers’ mother to Dr. Walcoff’s own home after a surgery, to keep an eye on it.

C. Community Witnesses In Opposition

1. Kim Shiley (Tr. 173-191):

Kim Shiley testified that she lives in the Clarksburg Town Center, about two miles from the subject site. For two years she dedicated herself to understanding the Clarksburg Master Plan and the type of development that should be occurring in Clarksburg. Along with four other people, she formed the Clarksburg Town Center Advisory Committee (CTCAC), and she is testifying for that

group as the treasurer and vice-president. [Although the CTCAC did not give the required 10 days notice, Petitioners' attorney indicated he had no objection to testimony on behalf of the group. Tr. 174.]

Ms. Shiley indicated that the Master Plan doesn't have any type of strict guidelines on special exceptions. This site is on part of the 355 transit corridor (page 54 of the Plan). One of the main objectives for this area was to retain residential, single-family, detached homes, while addressing a need for increased traffic along 355. She noted that safety is a major concern for businesses as well as for the residents. Properties fronting on 355 have been developed over many decades, and the most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355.

According to Ms. Shiley, the Master Plan was very aware of what is now the high school, but was a middle school at the time. That was considered institutional land use, and around it was supposed to be residential use and a new middle school that took the public land by right. There's a mixture there, but it was a mixture that was known.

Ms. Shiley further testified that there are compatibility issues. The church is less than 2,600 square feet, and the planned vet clinic would be 2.65 times larger than the church, which is on a historic grounds. By Ms. Shiley's calculation, the proposed building will be 6,864 square feet (132 feet long and 52.8 feet wide). It is 6,610 square feet according to the Planning Board report. CTCAC feels that the fact that this structure is almost three times larger than the church itself "does not represent compatibility; that it's a structure that will be out of scale whether it has dormers or windows that look like a residence or not. Its massing will be such that you will know that it's, you know, not your typical house." Tr. 182.

When asked by the Hearing Examiner whether her point about incompatibility would be more apropos if this were right in the middle of a series of single family houses, as opposed to being

between a church, which is institutional in nature, and a school, Ms. Shiley responded that the vet clinic would be active six days a week, unlike the church, and she repeated her point about the size difference between the proposed vet clinic and the church (although she admitted that the height was about the same).

According to Ms. Shiley, the church was constructed in 1878, and then it burned and this new one was rebuilt in 1924. The cemetery dates from that time as well. Ms. Shiley introduced pictures of the John Wesley United Methodist Church and cemetery (Exhibits 75, 76 and 77). She contends that the church did not speak out about their concerns over the effect of the vet clinic upon the cemetery because it “was not their nature” to do so.

Ms. Shiley also expressed concern about the safety of the proposed entry to Route 355, without a left turn lane or a right in/right out requirement. The Hearing Examiner explained that the only expert testimony indicated it was safe, and the state will have the final say when this issue is reviewed at subdivision.

Ms Shiley expressed the preference of her organization for a brick screening fence for the parking lot. She stated that, from an architectural standpoint and from an exterior standpoint, brick is going to hold up over time and have more character to it than a plastic fence.

2. Lynn Fantle (Tr. 192-206; 271):

Lynn Fantle testified that she lives about two miles from the subject site. (She is the vice president of CTCAC.) According to Ms. Fantle, a parking area on the side lot is not compatible with the residential nature of the area, and the Clarksburg Civic Association, as far back as 1994, made a point of saying that, for any business anywhere in Clarksburg, the parking should be located to the rear of the building. When the Hearing Examiner mentioned the testimony that the side parking lot would be barely visible from Route 355, Ms. Fantle indicated she was still concerned that dogs

heading into or out of the vet clinic might relieve themselves on the nearby grave stones. Ms. Fantle also mentioned problems with traffic volume and safety.

When asked on cross-examination how the proposed facility could be considered incompatible with the area, given the two schools surrounding it, Ms. Fantle responded that the County had promised to build the schools with traditional architecture, but they had not done so. When it was pointed out on cross-examination that almost all structures near the subject site on the west side of Route 355 were institutional in nature (schools, church, tennis courts) and that the schools had more bulk than the proposed vet clinic, Ms. Fantle replied that because there were already two extremely massive buildings there, you shouldn't put a third one there. Ms. Fantle pointed out that there was an overall intent in the Master Plan to concentrate commercial uses and uses such as this in the town center area, not along the Route 355 corridor.

Finally, Ms. Fantle testified that her organization would prefer if the sign proposed by Petitioners were embedded within a low brick wall, running parallel to Route 355, and not perpendicular, to avoid “visual clutter.”

3. James Gregg (Tr. 230-254):

James Gregg testified that he lives at 12700 Running Brook Drive, which backs up to the Church adjacent to the subject site. He has lived there for 40 years, and he strongly opposes a special exception to establish and operate a veterinary animal hospital on the subject site. According to Mr. Gregg, the south side of Running Brook Drive consists of seven homes, “predominantly Black owned.”⁸ The back yards of the seven homes are directly across [the church cemetery] from the proposed facility.

⁸ Mr. Gregg complained that Petitioners had spoken to the whites in the area, but not to him and other African-Americans on his block. The Hearing Examiner asked Petitioners to meet with Mr. Gregg and others on his block, as well as with representatives of the adjacent church, prior to closing the record, to discuss the possibility of a noise screening fence along the northern property line. Tr. 260-262. Mr. Gregg reportedly informed Petitioners that he was no longer interested in having input. See Exhibits 88 through 94.

Mr. Gregg testified that there is a very heavy flow of traffic on Route 355 in that area, especially if there is an accident on Interstate 270, which happens frequently. Traffic is so heavy that he can not turn north on Route 355 without the risk of an accident 3 or 4 days a week. In addition, high school drivers from the new high school will soon be added to the mix. Moreover, the site is in a curve with a slight knoll and with low visibility. People who wish to enter the facility by traveling north on 355 will not be able to fully see until they come to the top of a hill. The proposed facility sits on a flat area at the top of the hill, so people can't see a thing until they get up there.

Mr. Gregg also expressed concern about the potential for barking dogs when they walk between car and clinic. The Hearing Examiner explained that the possibility was inherent in every veterinary clinic, and the Zoning Ordinance permits such clinics in the R-200 Zone, so it cannot, *per se*, disqualify the application.

Mr. Gregg was also worried that an outdoor exercise facility might be established on the land adjacent to the subject site owned by Petitioners. [He was reassured that it cannot be done because they could not meet the 200 foot setback requirements in the Zoning Ordinance for such a facility.]

Questions about numbers of staff, hours of operation, the holiday schedule and limits on the number of animals were raised and answered. Mr. Gregg also indicated his concern about noise from the facility in spite of the intended buffers, since the cemetery between his home and the subject site is an open area.

Mr. Gregg testified that he did not think there was a need for this facility because there was another at Milestone, about two miles away. The hearing Examiner explained that Need is not an issue for this type of special exception, and a second facility far outside of the defined neighborhood could not be considered in determining whether the proposed project would affect the area adversely or alter the predominantly residential nature of the area.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. A special exception use is deemed presumptively compatible within the zoning district in which it is authorized, unless specific adverse conditions at the proposed location are shown to overcome the presumption. Pre-set legislative standards are both specific and general.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a veterinary hospital and animal boarding use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site

conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggested the following inherent characteristics of a veterinary hospital and animal boarding use (Exhibit 57, p. 12):

The inherent characteristics associated with the proposed use are daily arrival and departure of veterinary staff and intermittent entry and exit of customers with pets. Noise and odors of animals are inherent effects. Deliveries may come by mail or in small parcels. Specialty medical equipment will need servicing, but mostly by technicians in regular vehicles. Most activities are internalized within the structure, however, animals must be walked or carried from the parking lot into the structure.

Technical Staff also suggested that non-inherent characteristics may come from a combination of uses in this case. However, they correctly point out that, although the subject site and adjacent property is zoned residential, only one abutting property is actually a residence, and that property is currently owned by Petitioners and separated from the use by a forested section on the special exception site that will remain in a conservation easement. The other adjacent properties are a church and a school. There are residences on confronting properties, but Technical Staff concluded that Route 355 presented a significant barrier.

The Hearing Examiner agrees with this analysis, but would add that the impact upon the single-family residences on the south side of Running Brook Drive must also be considered. While they are not technically adjacent to the facility, they are separated only by a cemetery which is just the width of the church's lot. Nevertheless, even considering those homes, the evidence in this record indicates that the potential for noise will be mitigated to levels permitted under the Zoning Ordinance by prohibiting outdoor animal activity and by acoustical design of the structure.

The visibility of the new facility will be largely reduced by vegetative screening. While a portion of the structure will be visible, the revised design incorporates new residential style features,

including a pitched roof and residentially scaled and styled windows. The height and width of the building front have also been reduced to residential proportions. Thus, negative effects of any non-inherent characteristics have been largely avoided.

Under these circumstances, the Hearing Examiner concludes, as did Technical Staff, that there are no adverse effects sufficient to warrant denial of the petitions.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the Petitioners' evidence and the testimony at the hearing provide sufficient evidence that the general standards would be satisfied in this case, as outlined below. Petitioner

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: A veterinary hospital and an animal boarding place are both permitted special exceptions in the R-200 Zone, pursuant to Zoning Ordinance §59-C-1.31(d).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: As described in Parts IV. C. and D., below, the proposed uses would comply with the standards and requirements set forth for those uses in Code §§59-G-2.32 and 59-G-2.02.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and*

adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property lies within the area analyzed by the *Clarksburg Master Plan*, approved and adopted in 1994. It is also within the transit corridor of that Plan (Master Plan, pp. 54-58), including properties fronting on MD 355. Master Plan compliance was addressed at length in Part II.C. of this report. The Master Plan states the most significant planning challenge here is to maintain and continue the residential character while addressing the need for increased traffic capacity along MD 355.

The Master Plan is silent as to the subject site itself; however, it supports the R-200 zoning for the property. Since the R-200 Zone permits the two special exception uses sought in this case, it is reasonable to conclude that the requested special exceptions are not, *per se*, inconsistent with the Master Plan. Although some community witnesses characterized this project as a commercial use, it is actually a “service use,” and Petitioners have gone far to give the proposed facility a residential look. The front width of the proposed facility will not exceed the average front widths of residences in the neighborhood (Tr. 207-229), and the proposed parking facility, though not on a back lot, will be almost invisible from Route 355 because of a berm, landscaping and proposed fencing, according to the evidence.

Although this is a residentially zoned area, the fact is that the subject site is sandwiched between institutional uses, a church to the north and a large school (Rocky Hill Middle School) to the south. It is also very close to another large school,

Clarksburg High School, to the north. It is therefore hard to say that this proposed service use is out of character with the area.

Based on the entire record, the Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the *Clarksburg Master Plan* and that the proposed facility will be compatible with its surroundings.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Both the traffic generated and the on-site parking will be within required limits. Transportation Planner Stephen Peterson testified that the proposed use will not generate 30 peak hour trips in either the morning or evening rush hours, and therefore the Local Area Transportation Review (LATR) Guidelines do not require a further traffic study. The proposed use will be in harmony with the neighborhood because the site is surrounded by institutional uses and the design, scale and bulk of the proposed structure is compatible with the residential community.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the requested uses would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The potential for the subject facility to create noise from barking dogs in a residential neighborhood is certainly a matter of concern. This issue was discussed in Part II.D. of this report, where the Hearing Examiner concluded that some barking was inherent in the two special exceptions sought, that the Zoning Ordinance nevertheless permits them in the R-200 and other residential zones, while specifying strict noise standards, and that Petitioners will be compliant with the applicable noise standards. A condition requiring compliance with those standards has been recommended. The evidence also indicates that the proposed use will not cause any of the other adverse effects listed.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: There are no other special exceptions in the area, and the Hearing Examiner therefore concludes that the proposed uses will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Based on the evidence in this case, the Hearing Examiner also finds that these uses will not alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed uses would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The proposed veterinary hospital and

boarding facility will provide needed health care for local pets, and will have no adverse effect on any of the listed individuals.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area Transportation Review[PATR],⁹ as required in the applicable Annual Growth Policy.*

(ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Subdivision is required, and therefore the planning Board, and not the Board of Appeals, is charged with determining the adequacy of public facilities. In accordance with this provision, subdivision approval has been recommended as a condition of the special exceptions. Nevertheless, the evidence supports the conclusion that the subject property would be served by adequate public facilities. Public water serves the site and public sewer service is available in a line running across Route 355 from the site. The site will require no school services. A fire station and police station are both in close proximity, according to Technical Staff.

Transportation Planner Stephen Peterson testified that the proposed use will not generate 30 peak hour trips in either the morning or evening rush hours, and therefore

⁹ Policy Area Transportation Review (PATR) standards do not apply to this post-July 1, 2004 Petition.

the Local Area Transportation Review (LATR) Guidelines do not require a further traffic study.

The issue of traffic safety was discussed in Part II.E. of this report. As noted there, the only expert testimony in this case, given by Stephen Peterson (Tr. 135-163), is that access to the site will be safe and efficient and that the issue will be revisited at subdivision. Based on this record, and subject to rules and conditions imposed at subdivision and/or by the State of Maryland, the Hearing Examiner finds that the balance of evidence available at this time supports a finding that the proposal will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards: Veterinary Hospitals.

The specific standards for a veterinary hospital are found in Zoning Ordinance § 59-G-2.32. The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.32. Veterinary hospital.

(a) In any commercial, central business district or transit station zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:

- (1) There must be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space.*
- (2) All areas for the keeping of animals must be soundproofed.*

Conclusion: Not applicable; the property is not in a commercial, CBD or transit station zone.

(b) In any residential or rural zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:

- (1) In the R-150, R-90, and R-60 zone, the maximum lot size is one-half acre. In the R-60 zone a veterinary hospital must be located along a major highway with an existing right-of-way width of no less than 90 feet, and be adjacent to*

or confronting a central business district or a property zoned for commercial use.

Conclusion: Not applicable. The property is not in these zones; it is zoned R-200.

(2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line 200 feet and screened from adjacent residential properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.

Conclusion: No outdoor exercise or walking of animals will be permitted in these special exceptions because the lot is only 211 feet wide, which is too small to accommodate the required 200 foot setback.

(3) For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure.

Conclusion: The noise control issue is discussed in Part II.D. of this report. According to a report prepared by acoustical expert Kevin Miller, the sound levels outside of Petitioner's facility are fully compliant with Zoning Ordinance §59-G-2.32(b). See Tr. 54-69, and Exhibits 10 and 38(d). Moreover, the absence of any outdoor dog walking and the inclusion of special acoustical designs and materials in the proposed facility should ameliorate noise conditions. Based on this record, the Hearing Examiner finds that Petitioners will be compliant with the applicable noise standards.

(4) All buildings and accessory structures must be set back from any property line a minimum of 50 feet.

Conclusion: This condition has been met by the proposed building.

(5) No animal may be outdoors between 6 p.m. and 8 a.m.

Conclusion: Technical Staff believes that this provision is intended to regulate exercise and walking of animals outdoors, not to govern drop-off and pick up of animals. The Hearing Examiner concludes that that is a reasonable interpretation of the statute. Since no outdoor exercise or walking is being sought in these petitions, this condition will not be violated.

(6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.

Conclusion: The acoustical report indicates that the building will be designed to meet these standards. Since there is no contrary evidence, the Hearing Examiner accepts the expert's conclusion. However, to be safe, the Hearing Examiner has incorporated the standards into a recommended condition.

(7) Dogs must not be walked or exercised in outdoor areas that are off-site.

Conclusion: Outdoor exercise and outdoor walking of animals are prohibited in these special exceptions, whether on site or off site.

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number:

- (i) *Acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.*
- (ii) *Detailed floor plans that show all the interior areas and their use designations,*
- (iii) *Site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.*

Conclusion: (i) A report prepared by acoustical expert Kevin Miller demonstrates that, with the appropriate building design and materials, sound levels outside of Petitioner's facility will be compliant with Zoning Ordinance §§59-G-2.02(b)(3) and (6), under a general worst case scenario (although there may be rare exceedences). *See* Tr. 54-69, and Exhibits 10 and 38(d).

(ii) A detailed floor plan was submitted as Exhibit 74, and

(iii) There will be no exterior areas for exercising, walking or keeping animals.

- (9) *The Board must specify a minimum number of off-street parking spaces, taking into consideration the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. This number must in no case be less than 5.*

Conclusion: The proposed parking lot provides 17 parking spaces, including one that is accessible to the handicapped. Under the boarding facility special exception (Zoning Ordinance §59-G-2.02(b)(9)), which is joined with the veterinary hospital in this case, 13 spaces would be required (10 for staff, plus 3). Thus, Petitioners would exceed both that requirement and the minimum of 5 set in this subsection. A condition is recommended requiring maintenance of the proposed 17 parking spaces.

- (10) *The Board may regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.*

Conclusion: The hearing Examiner accepts the boarding limit of 49 animals (with no more than 23 large dogs) proposed Technical Staff and the Planning Board. All walking and exercise of animals will be done indoors in a room specially designed for that purpose. A condition has been recommended so specifying.

(11) The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling; abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by County authorities.

Conclusion: A condition embodying these terms is recommended by the Hearing Examiner in Part V of this report, and it is consistent with the recommendation of the Planning Board. Logs may be kept either on a computer or in writing, but must be available for inspection by County authorities.

(12) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.

Conclusion: Limited grooming and bathing services will be provided, and sales of goods will be limited to prescription medicine and prescription pet food.

(13) All litter and animal waste must be contained and controlled on the site.

Conclusion: Dr. Walcoff testified that all litter and animal waste will be double bagged on-site and picked up by a contractor. Tr. 37-38. Technical Staff reportedly saw no litter or animal waste at Dr. Walcoff's existing facility and did not smell any animal waste. A condition embodying the statutory standard is proposed in Part V of this report.

- (14) Animals may be kept overnight at the hospital only for medical purposes. If animals are kept for non-medical purposes, a separate application for an animal boarding place must be approved.*

Conclusion: In addition to animals kept overnight for medical purposes, a separate application for an animal boarding place is consolidated with the veterinary hospital petition, as discussed herein.

- (15) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect.*

Conclusion: According to Technical Staff, public water and sewer will serve the site.

- (c) Any veterinary hospital lawfully existing prior to the effective date of this ordinance is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.*

Conclusion: Not applicable. This will be a new facility.

D. Specific Standards: Animal Boarding Place

The specific standards for an animal boarding place are found in Zoning Ordinance § 59-G-2.02. The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.02. Animal boarding place.

- (a) In any central business district, commercial, or transit station zone where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:*
- (1) Exterior runs, exercise yards, or other such facilities for the keeping of animals are not permitted.*
 - (2) All interior areas for the keeping of animals must be soundproofed.*
 - (3) In the C-1 zone, an animal boarding place must be located at least 75 feet from the nearest residentially-zoned land, and must be operated in conjunction with a veterinary hospital.*

Conclusion: Not applicable. The site is in a residential zone.

(b) In any residential or rural zone where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:

- (1) The minimum lot size is 2 acres or the minimum required in the zone, whichever is greater.*

Conclusion: The R-200 Zone calls for a half acre minimum lot size, so the 2 acre standard provided for in this section sets the minimum. Technical Staff indicates that the subject site will meet this minimum after subdivision, with a lot size of 87,138 square feet (*i.e.*, just over 2 acres)

- (2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line a minimum of 200 feet and screened from adjacent residential properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.*

Conclusion: No outdoor exercise or walking of animals will be permitted in these special exceptions because the lot is only 211 feet wide, which is too small to accommodate the required 200 foot setback.

- (3) For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure.*

Conclusion: The noise control issue is discussed in Part II.D. of this report. According to a report prepared by acoustical expert Kevin Miller, the sound levels outside of Petitioners' facility are fully compliant with Zoning Ordinance §59-G-2.32(b). *See* Tr. 54-69, and Exhibits 10 and 38(d). Moreover, the absence of any outdoor dog walking and the inclusion of special acoustical designs and materials in the proposed facility should ameliorate noise conditions. Based on this record, the Hearing Examiner finds that Petitioners will be compliant with the applicable noise standards.

- (4) All buildings and accessory structures must be set back from any property line a minimum of 75 feet.*

Conclusion: According to Technical Staff, this condition has been met with a 77.1 foot setback for the part of the building containing the boarding facility. Exhibit 57, p. 11. Actually, the Revised Site and Landscape Plan (Exhibit 52(a)), shows setbacks of 77.1 feet and 75.1 feet for the boarding facility, both of which meet the minimum. The Hearing Examiner notes that the part of the building housing the veterinary hospital is set back 71.5 feet, which meets the 50 foot minimum setback for veterinary hospitals, but not the 75 foot minimum setback for boarding facilities. While this raises some question, the Hearing Examiner concludes that Technical Staff did not act unreasonably in looking at these two facilities as separate entities for setback purposes since they are two distinct special exceptions, and they have separate designated areas on the Site and Floor Plans.

- (5) No animal may be outdoors between 6 p.m. and 8 a.m.*

Conclusion: Technical Staff believes that this provision is intended to regulate exercise and walking of animals outdoors, not to govern drop-off and pick up of animals. The Hearing Examiner concludes that that is a reasonable interpretation of the statute. Since no outdoor exercise or walking is being sought in these petitions, this condition will not be violated.

- (6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery*

County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.

Conclusion: The acoustical report indicates that the building will be designed to meet these standards. Since there is no contrary evidence, the Hearing Examiner accepts the expert's conclusion. However, to be safe, the Hearing Examiner has incorporated the standards into a recommended condition.

(7) Dogs must not be walked or exercised in outdoor areas that are off-site.

Conclusion: Outdoor exercise and outdoor walking of animals are prohibited in these special exceptions, whether on site or off site.

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number:

- (i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b) (3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.*
- (ii) detailed floor plans that show all the interior areas, including runs and kennels, and*
- (iii) site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.*

Conclusion: (i) A report prepared by acoustical expert Kevin Miller demonstrates that, with the appropriate building design and materials, sound levels outside of Petitioner's facility will be compliant with Zoning Ordinance §§59-G-2.02(b)(3) and (6), under a general worst case scenario (although there may be rare exceedences). *See* Tr. 54-69, and Exhibits 10 and 38(d).

(ii) A detailed floor plan was submitted as Exhibit 74, and

(iii) There will be no exterior areas for exercising, walking or keeping animals.

(9) *The board must specify a minimum number of off-street parking spaces equal at least to the number of employees on the maximum shift plus three. The required number of parking spaces must in no case be less than 3.*

Conclusion: The proposed parking lot provides 17 parking spaces, including one that is accessible to the handicapped. Under this provision of the boarding facility special exception, 13 spaces would be required (10 for staff, plus 3). Thus, Petitioners would exceed the requirement. A condition is recommended requiring maintenance of the proposed 17 parking spaces.

(10) *The Board may regulate hours of operation. The Board may also regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.*

Conclusion: The Hearing Examiner accepts the staff limit of 10 and the boarding limit of 49 animals (with no more than 23 large dogs) proposed Technical Staff and the Planning Board. All walking and exercise of animals will be done indoors in a room specially designed for that purpose. A condition has been recommended so specifying.

(11) *Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.*

Conclusion: Limited grooming and bathing services will be provided, and sales of goods will be limited to prescription medicine and prescription pet food.

(12) All litter and animal waste must be contained and controlled on the site.

Conclusion: Dr. Walcoff testified that all litter and animal waste will be double bagged on-site and picked up by a contractor. Tr. 37-38. Technical Staff reportedly saw no litter or animal waste at Dr. Walcoff's existing facility and did not detect the smell of animal waste. A condition embodying the statutory standard is proposed in Part V of this report.

(13) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect.

Conclusion: According to Technical Staff, public water and sewer will serve the site.

(c) Any animal boarding place lawfully existing before November 1, 1977, is a conforming use and may be extended, enlarged or modified by special exception subject to the provisions of this section.

Conclusion: Not applicable. This will be a new facility.

E. General Development Standards

In addition to the other general and specific standards set forth above, "*Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, R-200] except when the standard is specified in Section G-1.23 or in Section G-2.*" For this special exception, applicable development standards were specified in both Section 59-G-2.32 and Section 59-G-2.02. Those standards and the applicable standards of the R-200 Zone are set forth on the following page in a chart provided in Technical Staff's Supplemental Report (Exhibit 57, p. 11). It also shows the changes made in Petitioners' plans after the Planning Board initially rejected their proposal:

Table 1. Required Development Standards and Development Standards that are Proposed for Approval

Development Standard – R-200/Uses.	Required Development Standards	Development Standards PREVIOUSLY DENIED	Development Standards REVISED FOR APPROVAL AUGUST 2006 (Bold)
Maximum Building Height:	50 feet	31 feet	23 feet
*Minimum Lot Area:	*87,120 sq. ft.	87,138 sq. ft.	87,138
Minimum Width at Front Building Line:	100 feet	211 feet	211 feet
Minimum Width at Proposed Street Line:	25 feet	211 feet	211 feet
Minimum Front Yard Setback:	40 feet	71.4 feet	71.9 feet
Minimum Side Yard Setback:	One Side 12 feet Sum of both sides 25 feet	71.4 feet	73 feet and 5 inches
Minimum Rear Yard Setback:	30 feet	121.2 feet.	135 feet and 6 inches
Maximum Building Coverage:	25%	10%	7.6 %
Minimum Lot Area for Use	87,138s.f.	87,138 sq.ft.	87,138 sq.ft.
*Minimum Building Setback for Boarding Use	*75 feet	75 feet	77 feet and 1 inch
**Minimum Building Setback for Animal Hospital Use	**50 feet	71 feet	71 feet and 5 inches

*Required by 59-G-2.02

** Required by 59-G-2.32

The remainder of Zoning Ordinance §59-G-1.23 concerns consistency with the forest conservation and water quality plans, signs that comply with Code § 59-F, compatibility of new or altered structures with the residential zone and limits on leakage of lighting into the neighborhood. The issues relating to the environment, signs and lighting were discussed at length in Part II. D. of this report.

Environmental Staff recommended approval of these petitions, subject to compliance with forest conservation and water quality plans. The Hearing Examiner has recommended a condition requiring such compliance.

The sign Petitioners seek to install will require a permit approved by DPS, and most likely a sign variance. The Hearing Examiner has recommended a condition requiring Petitioners to obtain a sign permit and to file copies of that sign permit and any sign variance with the Board of Appeals.

Proposed lighting has been approved by Technical Staff and comports with the limits on light spillage in a residential zone. A condition has been recommended specifying that lighting on site must be arranged such that there is no light exceeding 0.1 foot candles at the side and rear property lines, as shown on Exhibit 38(h). The pole-mounted lights in the parking lot must be turned off when the facility is not open, except as required for safety.

Compatibility of the proposed structure in a residential zone was analyzed extensively by Technical Staff, as discussed in Part II.C. of this report in conjunction with Master Plan compliance. Based on the entire record, the Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the *Clarksburg Master Plan* and that the proposed facility will be compatible with its surroundings.

Based on the testimony and evidence of record, I conclude that the use proposed by Petitioners meets the specific and general requirements for the use, and that the petitions should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petitions S-2659 and S-2660, which seek special exceptions for a veterinary hospital and an animal boarding place at 22414 and 22416 Frederick Road, Clarksburg, Maryland, be ***granted***, subject to the following conditions:

1. The Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel identified in this report.
2. The hours when the facility is open to the public for drop-off and pick up of animals will be limited to 7:00 a.m. to 8 p.m., Monday through Friday, and 7:00 a.m. to 1:00 p.m. on Saturday. Animals may be seen at the veterinary hospital by appointment only, except in emergency situations. This facility is not an after-hours emergency facility, and after-hour calls (except those relating to an animal already in the care of this facility), shall be referred to an emergency clinic. The facility will be staffed after office hours solely to accommodate emergency situations for animals already in care of the facility and to provide care for the animals who must remain overnight for medical purposes and for those being boarded. Scheduled appointment hours may not begin until 9:00 a.m., Monday through Saturday. Monday through Friday, appointments may continue until 7:00 p.m., and the facility will close at 8:00 p.m. On Saturdays, appointments may continue till 12:00 noon, and the facility will close at 1:00 p.m. A written or computer log of all appointments, drop-in and emergency client activities must be kept, and be available for inspection by County authorities. Petitioners must also submit a yearly activities report to the Board of Appeals.
3. The animal boarding facility is limited to forty-nine (49) animals on site at any one time, and the total of dogs 35 lbs. and over will be limited to twenty-three (23) at any one time. The actual number of kenneled animals is expected to be well below 49, except on holidays.

4. No outdoor exercising of animals is permitted on or off site, nor may animals be walked outdoors to relieve themselves. Animals may be walked on a leash within the enclosed area labeled “Dog Walking Area” on the revised site and landscape plan (Exhibit 52(a)), and that should be restricted to daylight hours except in emergencies or when humanitarian considerations require it.
5. The proposed facilities must be designed and constructed in a manner that will insure noise levels within County standards, not to exceed 40 dBA within 10 feet of the facility. On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.
6. All litter and animal waste must be contained and controlled on the site.
7. Any accessory operation, such as grooming or the sale of pet food must be limited as an accessory activity to a percentage of sales not to exceed 20%. Goods for sale at this facility will be limited to prescription medicine and prescription pet food.
8. Petitioner shall be limited to a maximum of ten (10) staff (including all veterinarians, support staff and interns) on site at any one time, provided that the number of veterinarians on site at any one time shall not exceed three (3). Kennel staff are expected to come in three times a day on Sundays to walk the animals, as well as to feed, clean, and give them medicine, if needed. The number of staff for the boarding facility will be determined by the number of kenneled animals, generally one for every 10 animals, but at no time shall kennel staff, combined with all other staff on site, exceed the 10 staff limit.

9. Petitioner must provide 17 parking spaces (including one that is van accessible), as shown on the revised site and landscape plan.
10. The parking lot screening fence shown on the revised site and landscape plan (Exhibit 52(a)), shall be constructed out of wood, not brick or plastic, in accordance with the wishes of the neighbors living across Maryland Route 355. It should be a board-on-board fence with vegetation in front of it, as shown on Exhibit 52(a).
11. Lighting on site must be arranged such that there is no light exceeding 0.1 foot candles at the side and rear property lines, as shown on Exhibit 38(h). The pole-mounted lights in the parking lot must be turned off when the facility is not open, except as required for safety.
12. Petitioners may erect a sign in front of their facility, but must first obtain a permit for such sign from the Department of Permitting Services (and if necessary, a sign variance), and copies of that sign permit and any sign variance must be filed with the Board of Appeals.
13. Petitioner must comply with all applicable Federal, State and local regulations regarding safe storage and use of any x-ray equipment on the site.
14. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
15. Petitioners shall comply with the terms of approved forest conservation, water quality and stormwater management plans, and shall establish and maintain a forest conservation easement in the area shown on the revised site and landscape plan (Exhibit 52(a)).

16. The adequacy of public facilities must be determined by the Planning Board at the time of subdivision review in this case. Therefore, subdivision approval is a condition of these special exceptions.
17. Petitioners shall coordinate with the adjacent John Wesley United Methodist Church (Rocky Hill Church) to allow the latter access to the Petitioners' property for maintenance of cemetery markers and grounds immediately surrounding the markers. Petitioners shall take no action that would be detrimental to the condition of the cemetery markers or the area immediately surrounding the markers.

Dated: December 28, 2006

Respectfully submitted,

Martin L. Grossman
Hearing Examiner